

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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DAVID VANN,

Plaintiff,

Index No.

- against -

6:18-cv-06464

THE CITY OF ROCHESTER, a municipal entity,
POLICE OFFICER MATTHEW DRAKE, IBM# 1956,
POLICE OFFICER STEVEN MITCHELL, IBM# 2134,
INVESTIGATOR JEFFREY KESTER, IBM# 2230,
SERGEANT JEFFREY LAFAVE, II, IBM# 1634,
POLICE OFFICER DAVID E. KEPHART, IBM# 2074,
POLICE OFFICER ADAM BRODSKY, IBM# 2478,
POLICE OFFICER TIMOTHY DEMPSEY, IBM# 2122,
INVESTIGATOR CHRISTOPHER MUSCATO, IBM #1331,
CAPTAIN GARY MOXLEY, POLICE OFFICER ANGEL
PAGAN, IBM# 2421, POLICE OFFICER CHRISTOPHER
J. BARBER, IBM# 1949, SERGEANT DANIEL J.
ZIMMERMAN, IBM# 295, POLICE OFFICER ERIC
McGRAW, IBM# 2131, SERGEANT JOSEPH LAIOSA,
IBM# 1180, INVESTIGATOR TOMESHA ANGELO,
IBM# 1665, TECHNICIAN STEPHANIE MINTZ,
IBM# 2496, Police Officers "JOHN DOES 1-10"
(whose names are currently unknown), and
other unidentified members of the Rochester
Police Department, THE COUNTY OF MONROE,
SANDRA DOORLEY, Individually and as District
Attorney of the County of Monroe, and MICHAEL
HARRIGAN, as an employee of the Monroe County
District Attorney's Office and Individually,

Defendants.

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Held via Zoom Videoconference

December 5, 2022

11:03 a.m.

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EXAMINATION BEFORE TRIAL of
CHRISTOPHER J. BARBER, Defendant, taken by
Plaintiff, pursuant to Article 31 of the
Civil Practice Law and Rules of Testimony,
and Order, held at the above-noted time and
place, before Michelle Conero, a Stenotype
Reporter and Notary Public within and for the
State of New York.

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A P P E A R A N C E S:

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BY: JOHN CAMPOLIETO, ESQ.

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S T I P U L A T I O N S

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IT IS HEREBY STIPULATED AND AGREED

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by and between the parties hereto that all

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rights provided by the F.R.C.P. including the

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right to object to any question except as to

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the form, or to move to strike any testimony

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at this examination, are reserved, and, in

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addition, the failure to object to any

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question or move to strike any testimony at

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this examination shall not be a bar or waiver

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to make such a motion, and is reserved for

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the trial of the action;

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It is further stipulated and

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agreed that this examination may be sworn to

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by the witness being examined before a notary

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public other than the notary public before

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whom this examination was begun;

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It is further stipulated and

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agreed that the filing and certification of

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the original of this examination are waived.

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2 THE REPORTER:

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4 The attorneys participating in this
5 deposition acknowledge that I am not physically
6 present in the deposition room and that I will be
7 reporting this deposition remotely.

8 They further acknowledge that, in lieu of
9 an oath administered in person, I will administer
10 the oath remotely.

11 The parties and their counsel consent to
12 this arrangement and waive any objections to
13 this manner of reporting.

14 Counsel, please state your acknowledgement
15 and agreement to this method of reporting on
16 the record.

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2 C H R I S T O P H E R J B A R B E R,

3 Defendant, having first been duly sworn

4 by the Notary Public, was examined and

5 testified as follows:

6 EXAMINATION BY

7 MR. SHIELDS:

8 Q Please state your name for the
9 record.

10 A Christopher Barber.

11 Q Please state your business address
12 for the record.

13 A 30 Church Street, Rochester, City
14 Hall 14614.

15 Q Good morning. My name is Elliot
16 Shields and I represent a man that was hurt.
17 I'm going to ask you some questions today. If
18 there's anything that I ask you that you don't
19 understand, please say so and I'll rephrase the
20 question for you. Okay?

21 A Okay.

22 Q Otherwise, if you answer the
23 question we're going to assume you understood
24 it. Do you understand everything I've said so
25 far?

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2 A. Yes.

3 Q. And you agree to ask me to
4 rephrase any questions you don't understand?

5 A. Yes.

6 Q. Okay. And so we're doing this
7 deposition virtually today. Can you tell
8 me, is there anyone else in the room with
9 you?

10 A. Just the attorney, Mr. Campolieto.

11 Q. It took me awhile to get it
12 down when I first met John as well.

13 A. I worked until 3:30 in the
14 morning. I got a little bit of sleep and a
15 little bit of coffee. I apologize for the
16 yawning and whatnot.

17 Q. No worries. Investigator --
18 it's Investigator Barber now. Right?

19 A. Correct.

20 Q. Investigator, do you have any
21 papers in the room with you that you plan
22 to look at to help you answer any
23 questions?

24 A. Nope. I have nothing with me.

25 Q. Okay. And you understand that

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2 everything that you say today, that I say
3 and anyone else says is going to be
4 transcribed into a little book by the court
5 reporter for use at trial in this matter?

6 A. Yes.

7 Q. And have you ever been
8 questioned under oath before?

9 A. Once, yeah. Do you mean court
10 in general or just a deposition like this?

11 Q. So let's take it -- in the
12 criminal context you've been questioned
13 under oath before?

14 A. I've been a police officer for
15 fifteen years, so I've been to court a
16 bunch where there's court reporters.

17 Q. So yes, you've been questioned
18 under oath in criminal court a bunch of
19 times. Correct?

20 A. Yes.

21 Q. It sounds like you said you've
22 also been questioned under oath once before
23 in the context of a civil case?

24 A. Correct.

25 Q. Okay. And was that the Melinda

1

2 Santos case?

3 A. Yes.

4 Q. Okay. Any other times that
5 you've testified under oath in a civil case
6 other than Melinda Santos?

7 A. No.

8 Q. And how about at any PSS or
9 other disciplinary hearings. Have you ever
10 testified at a PSS hearing?

11 A. I talked to a sergeant before
12 at their office. I don't know if that was
13 a hearing. I don't think -- I don't
14 remember it being recorded or anything.

15 Q. Okay. So that time that you
16 spoke with a sergeant in the context of a
17 PSS case, there was no court reporter to
18 your --

19 A. Not that I remember.

20 Q. -- knowledge? Okay. And what
21 was the context of that PSS case that you
22 spoke with the sergeant about?

23 A. I was a witness or -- like I
24 wasn't the named complainant on it but I
25 was on scene. They asked me to just like

1

2 say what I saw there.

3 Q. Okay. And what case was that,
4 do you remember?

5 A. It was down on East Ave,
6 probably maybe five years ago. Somewhere
7 around there.

8 Q. Okay.

9 A. It was an incident on East Ave.
10 I don't remember exactly what it was.

11 Q. Okay. Did you use force during
12 that incident or you were just a witness?

13 A. I had a use of force against
14 somebody else that wasn't involved, and I
15 think there was a complaint against another
16 officer who had a use of force with
17 somebody else somewhere else. It was all
18 one job card so my name was on it even
19 though I wasn't there.

20 Q. Okay. So like when the bars
21 were getting out and there was an incident?

22 A. Yeah. There was a big bar
23 fight at the end of the night.

24 Q. Okay. And do you remember what
25 type of force you used?

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2 A. I think I just helped with
3 handcuffing.

4 Q. Okay. Is that the only time
5 that you've ever had to speak with a
6 sergeant regarding a PSS case?

7 A. I think I went twice for the
8 same one for that. That's kind of all I
9 can remember.

10 MR. SHIELDS: And Michelle, I'm
11 saying PSS as in Professional
12 Standard Section.

13 Q. So first Investigator Barber,
14 can you tell me everything that you did to
15 prepare for today's deposition?

16 A. I had the original, I think,
17 file that was sent to me years and years
18 ago, so I flipped through that, tried to
19 see if I had a report and what paperwork I
20 had. I reviewed anything that had my name
21 on it or was associated to the case.

22 Q. Okay. When you say original
23 file that was sent to you years ago, can
24 you explain a little more what you mean?

25 A. Probably maybe three years ago

1

2 now when I was first served with the
3 paperwork for the David Vann case, I think
4 there was some stuff in there that had my
5 name on it, that I was listed as being
6 involved in it.

7 Q. Okay. So you were served with
8 a summons and complaint in the case.
9 Right?

10 A. Yes.

11 Q. Okay. Did you review the
12 summons and complaint before you came here
13 today?

14 A. It was years ago. I haven't
15 really reviewed the whole thing in quite
16 awhile. It's been an ongoing thing.

17 Q. So when you first got the
18 complaint, it was a lengthy complaint, did
19 you review that?

20 A. Yeah. Like I said, it was a
21 couple years ago now probably.

22 Q. Yeah. And then in preparation
23 for today's deposition did you look at any
24 paperwork? Any other paperwork?

25 A. The reports and stuff that were

1

2 part of the case. Like the felony package
3 I think it's called.

4 Q. Okay. So you looked at the
5 reports that were included with the felony
6 package?

7 A. Correct.

8 Q. Did you look at any other
9 records?

10 A. I had my PSS history, flipped
11 through that. Just some of the other -- I
12 think that's kind of the major stuff. Just
13 some of the reports that had been kind of
14 with them.

15 Q. And did looking at those
16 documents refresh your recollection of the
17 incident?

18 A. From the original night, is
19 that what you're talking about, on South
20 Ave?

21 Q. Correct.

22 A. Yes.

23 Q. Okay. And so I just want to,
24 you know, have an idea as I ask you
25 questions today, you know, what you used to

1

2 refresh your recollection. It sounds like
3 the grand jury referral?

4 A. Correct.

5 Q. Your concise officer history?

6 A. Yup.

7 Q. Incident reports from the night
8 of the incident?

9 A. Yes. They were in the package.

10 Q. Okay. Subject resistance
11 reports?

12 A. Those I didn't really look
13 through because they weren't -- they
14 weren't mine.

15 Q. Okay.

16 A. I wasn't there for any of it.

17 Q. Okay. Text sheets?

18 A. Yes, I had a text sheet.

19 Q. Okay. Any videos?

20 A. Yes.

21 Q. Okay. Pictures?

22 A. Yes. We confirmed the photos
23 that I took from that night.

24 Q. Okay. So we'll get to that in
25 a little bit. Anything else that you

1

2 looked at?

3 A. I kind of think that sums it
4 up.

5 Q. Okay.

6 A. I mean there was a bunch of
7 stuff, so if I'm forgetting something, I
8 apologize.

9 Q. Okay. And did you speak with
10 anybody about the deposition to prepare?

11 A. Just the attorney.

12 Q. Okay. By the attorney, you
13 mean John Campolieto?

14 A. Yes.

15 Q. Any other attorneys from the
16 Corporation Counsel's office?

17 A. No.

18 Q. Okay. Any of the other named
19 police officer defendants in the case?

20 A. No.

21 Q. Okay. So you didn't speak with
22 Angelo?

23 A. No. I haven't seen her in
24 awhile.

25 Q. Okay. How about Brodsky?

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2 A. No. Not about this. I seen
3 him at training on Thursday but we didn't
4 talk about this.

5 Q. Okay. What was the training
6 you attended on Thursday?

7 A. We had an active deadly
8 behavior training for like an active
9 shooter in like workplaces and stuff like
10 that.

11 Q. Okay. Where was that training?

12 A. It was out in Greece is where
13 the -- it was an empty office building that
14 we were using for it, just to kind of make
15 it look more like a real-life scenario, if
16 it were to happen how we should react.

17 Q. Got it. Was that just RPD or
18 was that other local agencies as well?

19 A. It was just our PD, but fire
20 was there because we're now kind of
21 utilizing them for active scenarios.
22 Rochester Fire was there as well for the
23 last half of the day.

24 Q. Okay. And is that a department-
25 wide training or something that only

1

2 certain officers had to do?

3 A. Department wide. I think the
4 county is getting it in the spring.

5 Q. Okay. Did you speak with
6 Kester?

7 A. I haven't seen him in awhile.
8 He's on days now and I work 7 at night
9 until 3 in the morning. We don't really
10 cross paths that often anymore.

11 Q. Okay. So right now you work
12 nights. Can you just tell me what section
13 you work and what your general schedule is
14 when you say you work nights?

15 A. Sure. So my section is now
16 called patrol section investigations. All
17 the investigators are out of a central
18 location. I work from 7:15 at night is
19 roll call, and we work until 7:30 a.m. I
20 have a set schedule five days on now from
21 Sunday night to early Friday morning.

22 Q. Okay. And how long have you
23 had that schedule?

24 A. The hours have been the same
25 for about two years now. The days off

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2 switched probably -- maybe a year ago now
3 probably.

4 Q. Okay. You were promoted to
5 investigator in 2020. Is that right?

6 A. Yup. January of 2020. So
7 almost two years.

8 Q. And what did you do before
9 that?

10 A. I was patrol on midnights for
11 the first twelve, almost thirteen years.

12 Q. When you say patrol on
13 midnights, that means you worked the
14 nightshift?

15 A. Yup. 11 at night until 7 in
16 the morning.

17 Q. So you pretty much worked
18 nights your entire career?

19 A. The whole time. Oh, yeah.
20 It's brutal. Never get used to it, I don't
21 care what anybody says.

22 Q. What section did you work when
23 you were a patrol officer?

24 A. So first I started out on the
25 west side, and then they did like a

1

2 reformatting of the city of how they were
3 set up. They went from east/west to then
4 like five divisions. So after they did
5 that, then I went to what was called
6 central section when they did the
7 reorganization.

8 Q. Okay. And when was that re-org?

9 A. Maybe eight years ago now.
10 Somewhere around there. Eight and-a-half,
11 nine.

12 Q. So that would be 2013, 2014?

13 A. Yeah. Probably. I'm not
14 positive on the year.

15 Q. Okay. Before the incident that
16 we're here to talk about today. Right?

17 A. Yes.

18 Q. And in September 2015 what was
19 your assigned section and, I guess, shift?

20 A. So I would have been central
21 first, which is central section, and
22 midnight hours.

23 Q. When you say midnight hours, do
24 you start at 11 p.m.?

25 A. Central section started at 10

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2 p.m. and we got out at 6 a.m. So they had
3 an hour shift to help with coverage and
4 stuff.

5 Q. 10 p.m. to 6 a.m.?

6 A. Yes.

7 Q. You started with the RPD in
8 2007. Is that right?

9 A. Correct.

10 Q. Okay. Did you speak with
11 Mitchell before your deposition?

12 A. No. I haven't seen him in a
13 few years. It's been quite awhile.

14 Q. And did you speak with Drake
15 before your deposition?

16 A. No. I haven't seen him in
17 awhile either.

18 Q. Okay. And you haven't seen
19 them because of your different work
20 schedules or something else?

21 A. Yeah. Usually work schedules.
22 Now I work out of a different office
23 altogether, so we don't usually cross
24 paths.

25 Q. Okay. And where is your office

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2 now?

3 A. I'm in -- we are in the Clinton
4 office. We share an office with the
5 Clinton and Goodman section at, I think
6 it's 113 North Clinton, I think, is the
7 address.

8 Q. Okay. I'm assuming if you're
9 saying that you haven't seen Mitchell and
10 Drake or Kester in awhile because of work
11 schedules, that you also don't like hang
12 out with them socially?

13 A. No.

14 Q. Okay. Are there officers that
15 you know at the RPD that you do hang out
16 with socially?

17 A. Dempsey occasionally. Now that
18 we have kids it's harder to do anything
19 anymore.

20 Q. I understand that one. I'm
21 just going to ask you some more background
22 questions before we get into some other
23 stuff. Generally what made you want to
24 become a police officer?

25 A. At the time my first wife was a

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2 police officer. Her family always did it
3 and she loved it. I didn't really have an
4 interest in it. I was working in a machine
5 shop, and that's what I went to school for.
6 We started losing a bunch of work to like
7 Indonesia and stuff like that, and they
8 were cutting hours. She was making good
9 pay and had benefits and a retirement. One
10 of her friends that I knew said I should do
11 a ride along. I did that and kind of
12 started liking it, so I decided to take the
13 test.

14 Q. Was she an RPD officer?

15 A. Yeah. She was Rochester, yeah.

16 Q. When was that that you did the
17 ride along?

18 A. Oh, that was maybe 2005.

19 Q. And what did you like about
20 what you saw on the ride along that made
21 you want to join the RPD?

22 MR. CAMPOLIETO: Objection.

23 A. The guys and people were great.
24 It was kind of the people.

25 Q. So it seemed like a good work

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2 environment?

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4 A. Yeah. It was -- you know, I
5 never really had any real interactions with
6 officers who were on the job so I never
7 really had an idea what it was actually
8 like. She obviously knew more about it.
9 Once I did that, then it was great.

10 Q. And your first wife, is she
11 still a police officer?

12 A. Yup.

13 Q. And who is that?

14 A. She's remarried now. Trenton
15 is her last name.

16 Q. Jennifer Trenton?

17 A. Yes.

18 Q. Okay. And when did you split?

19 A. Maybe '09. Somewhere in there.

20 Q. Okay. So I don't want to get
21 too much into your personal life. At the
22 time that you got married, you were not a
23 police officer and she was. Correct?

24 A. Correct.

25 Q. And when was that?

A. A little while after college.

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2 Maybe -- it might have been around the 2005
3 area. I'm not positive.

4 Q. Okay. Where did you go to
5 college?

6 A. I went to MCC.

7 Q. Okay. And where did you go to
8 high school?

9 A. Letchworth down in -- a school
10 down in Wyoming County.

11 Q. Near the park?

12 A. Yup.

13 Q. And can you just give me an
14 overview of -- I know you went into it a
15 little bit before -- all the ranks and
16 positions that you've held since you began
17 working with the RPD in 2007 until now?

18 A. So I was just an officer, and
19 then from officer I went to investigator.
20 It was kind of -- you just have to pick
21 which path. You either go investigator or
22 boss. Investigator was more appealing to
23 me.

24 Q. Okay. Why was investigator
25 more appealing to you?

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2 A. I think I liked the appeal of
3 working on the bigger jobs, I guess,
4 instead of -- I guess just going to all the
5 intoxicated bar closings wore on me.

6 Q. And can you tell me what your
7 role is generally as an investigator?

8 A. Sure. So we usually respond to
9 major events, like felony level stuff.
10 Shootings in Rochester are kind of --
11 honestly are the most predominant thing
12 that we respond to.

13 Q. So you respond to large events
14 like shootings and investigate?

15 A. Yes.

16 Q. So your role is to solve the
17 crimes?

18 A. We usually --

19 MR. CAMPOLIETO: Objection.

20 THE WITNESS: Sorry.

21 MR. CAMPOLIETO: Go ahead.

22 A. We usually -- once it happens,
23 then we get assigned follow-up stuff, like
24 see if we can find video, re-interview the
25 victims, witnesses, stuff like that to try

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2 to solve the crime. Yes.

3 Q. I think a different
4 investigator explained this to me but I
5 just want to check with you. In Rochester
6 the role of investigator is basically the
7 same that some other departments, like the
8 NYPD, call a detective. Right?

9 A. Correct. I think there's some
10 little difference about it. I don't
11 remember what it was.

12 Q. Like RPD doesn't have a title
13 called detective. Right?

14 A. Correct.

15 Q. Can you compare the culture
16 within the RPD at the time that you started
17 in 2007 until what you think it's like
18 today?

19 MR. CAMPOLIETO: Objection. Go
20 on.

21 A. You mean like a broad picture
22 of how things were when I -- with the
23 office or like just kind of the city in
24 general?

25 Q. The culture within the

1

2 department when you began. You said that
3 you liked the camaraderie among the
4 officers. Let's start with that. Do you
5 feel like there's the same camaraderie
6 today as when you joined?

7 A. I think so. I mean when we
8 were younger, though, we hung out more.
9 I'm older and have kids so it doesn't
10 happen as often.

11 Q. Okay. So that's you
12 personally. What about among other
13 officers in the department?

14 MR. CAMPOLIETO: Objection.

15 A. I think there still is.

16 Q. Okay. What do you think is
17 different now, generally, within the
18 department than it was in 2007?

19 A. I think when they did the
20 reorganization it broke everything up to
21 smaller kind of groups so you don't see
22 everybody as often.

23 Q. Okay. Did the culture in the
24 department change when body worn cameras
25 were rolled out?

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2 MR. CAMPOLIETO: Objection.

3 A. I don't really think so.

4 Q. Okay. What, if anything, did
5 change when body worn cameras were rolled
6 out?

7 A. I think they helped us a lot,
8 actually. I know nobody really wanted them
9 when they first came out, but then it just
10 kind of justified all the stuff we were
11 saying. I kind of -- I was actually quite
12 a bit for them after we had them for
13 awhile.

14 Q. Okay. And can you explain what
15 you mean when you said they justified
16 everything that you were saying?

17 A. Sure. So like we go to things,
18 like, you know, family troubles or
19 incidents, and they would tell us one thing
20 and we'd write it down, then we go to court
21 and they said I never seen that or I never
22 said that. We would have our body cam that
23 showed exactly what we said. So it just
24 kind of helped us out a ton when people
25 would go back on stuff.

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2 Q. So it's a good tool for
3 preserving evidence?

4 A. Yes.

5 Q. Is the same true about
6 officers' actions?

7 A. Yeah. I mean everything is
8 recorded. It's there. You can't really
9 dispute it.

10 Q. And in your role as
11 investigator, I think you compared that
12 previously to the role of a boss. Can you
13 explain --

14 A. Okay.

15 Q. I'll withdraw that. So earlier
16 I think you said there were two career
17 paths you could have chosen, investigator
18 or boss?

19 A. Yes.

20 Q. Can you explain what you mean
21 by that?

22 A. So usually once you go to
23 investigator, investigator is where you
24 stop. There's no real place to go from
25 there. We have divisions that go to

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2 separate things. Like, you know, there's a
3 drug division and there's some financial
4 crime stuff. You're always that rank but
5 you can go to different investigations,
6 where a boss can go from sergeant,
7 lieutenant and then onwards that way.

8 Q. So there's more upward mobility
9 if you had instead taken like the
10 sergeant's exam?

11 A. Correct.

12 Q. Okay. And as an investigator
13 do you oversee any other officers?

14 A. Not really. I mean I don't
15 have any supervisory role over them. I can
16 ask them for help and stuff, but I don't
17 really have any authority over them.

18 Q. And is that different from a
19 sergeant?

20 A. Yes.

21 Q. Okay.

22 A. That would be their supervisor.

23 Q. So is that sort of the
24 difference when you were explaining earlier
25 investigator versus boss as a career path?

1

2 A. I just liked more of the aspect
3 of doing an investigation compared to being
4 a boss or an administrative person.

5 Q. So let's say there was a use of
6 force incident, somebody made a complaint
7 against an officer. Is there any situation
8 where you would, for example, review the
9 body worn camera of that incident and what
10 happened?

11 MR. CAMPOLIETO: Objection.

12 A. No. That would be a
13 supervisor's role.

14 Q. Okay. That's what I was trying
15 to get at.

16 A. Got you. Okay.

17 Q. How has the culture within the
18 RPD changed since the Daniel Prude
19 incident?

20 MR. CAMPOLIETO: Objection.

21 A. I think we still just kind of
22 do our job. There's, I guess, nothing I
23 can really like pinpoint or say that's
24 changed.

25 Q. A lot of officers have quit,

1

2 though. Right?

3 MR. CAMPOLIETO: Objection.

4 A. I don't think because of that

5 in general.

6 Q. Have you seen reports in the

7 media where the city and/or the RPD has

8 complained that it's been difficult to

9 retain officers?

10 A. I've heard it but I haven't

11 read any reports or anything.

12 Q. Do you know anybody that has

13 quit from the RPD since the Daniel Prude

14 incident?

15 A. Not quit. I know some guys

16 that have retired and stuff, but they just

17 had their time in.

18 Q. Is it uncommon for people to

19 just retire once they've got their time in

20 and can collect their pension?

21 A. It all depends on the people.

22 One guy was waiting for a kid to get out of

23 college. Some guys are just twenty and

24 done. It all depends on kind of their own

25 personal stuff they've got going on.

1

2 Q. Do you have any plans to quit
3 in 2027?

4 A. I wish. Two little kids, it
5 ain't happening.

6 Q. What's the pension? Like
7 three-quarters or something?

8 A. We're tier 2. I'm not sure
9 what -- I'm tier 2. I'm not sure what all
10 the math works out to be. I know the
11 longer you stay, the more you leave with.

12 Q. So needless to say, it's not
13 your full salary that you retire with.
14 Right?

15 A. No. Nope.

16 Q. But you can pick up a second
17 job and make more?

18 MR. CAMPOLIETO: Objection.

19 A. I could I guess, yeah.

20 Q. I guess it wouldn't be a second
21 job, it would be a new job?

22 A. Yeah.

23 Q. On that note, while you're
24 working with the RPD are you allowed to
25 work other jobs?

1

2 A. Yes. There's like a form you
3 have to fill out to say what you want to do
4 and then get approval.

5 Q. Okay. So you've been with RPD
6 since 2007. Do you know the names of all
7 of the different police chiefs since you
8 began?

9 A. We've had a handful of them.
10 Maybe three.

11 MR. CAMPOLIETO: Just answer
12 the question he's asking. He just
13 asked do you know the names.

14 A. Okay. Some of them.

15 Q. In 2007 was that Duffy?

16 A. I think Duffy was gone when I
17 got here. I think it might have been
18 Moore.

19 Q. Okay. And then do you know who
20 was after Moore?

21 A. We had another guy for a little
22 while, but I can't remember who it was.

23 Q. Was it Sheppard or someone
24 different?

25 MR. CAMPOLIETO: We have a list

1

2 we can provide you of the police
3 chiefs' names, Elliot, if you'd like
4 it, and their dates of service.

5 A. I remember Sheppard but I don't
6 remember where he was in there.

7 Q. And do you know who was after
8 Sheppard?

9 A. We had some interims and stuff
10 like that, but I can't remember how they
11 all went.

12 Q. Cimonelli was after Sheppard?

13 A. Cimonelli I think. Yup.

14 Q. And then after Cimonelli, do
15 you remember who was next?

16 A. Like the interim ones or just
17 the ones that were appointed to chief?

18 Q. I don't know. I'm just trying
19 to see if there's any that stand out to
20 you.

21 MR. CAMPOLIETO: What's the
22 question? Do you want him to name
23 them or do you want to know if they
24 stand out to him? I can get you a
25 list of the chiefs.

1

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MR. SHIELDS: I have a list of
the chiefs, too, John.

3

4

MR. CAMPOLIETO: What's the
point of the question?

5

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MR. SHIELDS: I'm going to ask
you to stop talking during my
deposition.

7

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MR. CAMPOLIETO: I'm objecting.

10

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MR. SHIELDS: You can say
objection.

12

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MR. CAMPOLIETO: I'll ask him
to stop answering the questions.

14

15

MR. SHIELDS: John, I'm going
to call Judge Pedersen if you keep
talking.

16

17

MR. CAMPOLIETO: Call him right
now.

18

19

MR. SHIELDS: Stop talking,
John. Let me ask my questions. You
can say objection and that's it.

20

21

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MR. CAMPOLIETO: He's not
answering these questions.

23

24

MR. SHIELDS: I don't care.

25

It's not an appropriate objection,

1

2 John.

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MR. CAMPOLIETO: He's not
answering this question. Ask another
question.

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MR. SHIELDS: I'm calling Judge
Pedersen right now. I'm calling him
right now. You can't -- this is an
appropriate question and you're going
to be sanctioned, John.

11

12

MR. CAMPOLIETO: You're not
going to give him a quiz.

13

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MR. SHIELDS: You're going to
be sanctioned, John. You need to
stop interrupting my deposition.

16

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MR. CAMPOLIETO: He's not
answering this question. Call Judge
Pedersen. I don't even need to be on
the call. You can talk to him
yourself.

21

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24

MR. SHIELDS: You'd think after
a few years of doing depositions
you'd know what a proper objection
is, John.

25

MR. CAMPOLIETO: I'm objecting

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2

and I'm telling him not to answer
that question.

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MR. SHIELDS: What's the basis
of that, John? What's the basis?
Why don't you look up --

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7

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MR. CAMPOLIETO: We will
provide you a list. It's not whether
he knows the names of --

9

10

11

MR. SHIELDS: Why don't you
look up Rule 30(C)2, John.

12

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MR. CAMPOLIETO: We'll let you
call the Judge. If you need me on
the line with the Judge, you can call
me. We're taking a break.

16

17

18

MR. SHIELDS: We're not taking
a break. We're putting all of this
on the record.

19

20

Don't go off the record,
Michelle

21

22

MR. CAMPOLIETO: We're going
off the record for a minute and --

23

24

25

MR. SHIELDS: John, we're not
going off the record. I'm going to
do this call --

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MR. CAMPOLIETO: We are.

(Mr. Campolieto and Mr. Barber
turned off their Zoom cameras.)

MR. SHIELDS: Please stay on
the record while I make the call to
the Judge.

(Phone ringing.)

VIKKI: Judge Pedersen
(inaudible).

MR. SHIELDS: Hi. This is
Elliot Shields. How are you doing?
Is this Vikki?

VIKKI: Yeah.

MR. SHIELDS: Hi, Vikki. I'm
in the middle of a deposition with
John Campolieto on the Vann case, and
I'm calling because I am getting
some, what I believe to be, frivolous
objections from John, and he directed
his officer not to answer my question
and did not provide any basis. I
think it's inappropriate because Rule
30(C)2 is very clear that you can
only direct the deponent not to

1
2 answer for a limited number of
3 reasons, and John was unable to
4 articulate any of those reasons. I
5 told him to stay on the record as I
6 called the Judge and he turned off
7 his Zoom and walked to the other room
8 or something. I think that's
9 inappropriate and I'd like him to be
10 ordered to only make form objections
11 because he's interrupting my
12 deposition.

13 Basically I was asking -- I was
14 asking the deponent questions about
15 which police chiefs he remembers
16 working under. I was asking about
17 basically the change in the culture
18 of the department over the years that
19 he's worked there. John objected and
20 told him not to answer the questions.

21 VIKKI: Okay. The Judge isn't
22 here right now. I can try to give
23 his cellphone a call. What is the
24 best number to reach you? The one
25 you called -- wait. Why do you have

1

2 an 585 number?

3

4

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6

MR. SHIELDS: Because I grew up
in Rochester and I've had the same
phone number since I was maybe twelve
years old.

7

VIKKI: So 585 (inaudible)?

8

9

MR. SHIELDS: Yup, that's my
cell.

10

11

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VIKKI: All right. I'll call
and see if I can get a hold of him
now. I'm not -- I'll call him and
see what he says. I don't know how
long he's going to be gone
(inaudible). He's not participating
any more?

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MR. SHIELDS: I don't know what
he did. He said we're taking a break
and left the room maybe to, I don't
know, ask his boss if that was an
appropriate objection or something.
He did not articulate any basis other
than --

24

VIKKI: He just objected?

25

MR. SHIELDS: He just objected,

1
2 and it sounded like it was a
3 relevancy objection which is not an
4 appropriate objection, and it's
5 certainly not an appropriate reason
6 to direct his deponent not to answer
7 a question. If he wants to object,
8 he can object, but then he can't go
9 on making a speaking objection and,
10 you know, basically giving his
11 deponent a heads up about -- you
12 know, coaching him about how to
13 answer the question or why he thinks
14 it's inappropriate. The deponent has
15 to answer the question. I mean I
16 think that the only appropriate
17 objection to make is objection to
18 form or objection relevance. I mean
19 objection relevance I think is an
20 inappropriate objection. You can't
21 object on the basis of relevance. I
22 want to ask the guy about the culture
23 in the department. I had led up with
24 several questions that he did not
25 object to, and then I asked about the

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2

various chiefs and then John

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objected, had a long speaking

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objection and refused to let him

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answer the question, and then he

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stormed out after I yelled at him and

7

said John, you can't make that

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objection, you have to let him answer

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the question.

10

VIKKI: Okay. I will call and

11

see what he says. And in the

12

meantime --

13

MR. SHIELDS: Thank you. I

14

appreciate it, Vikki. Bye-bye.

15

(Mr. Campolieto turned his Zoom

16

camera back on.)

17

MR. CAMPOLIETO: Is the Judge

18

on the line?

19

MR. SHIELDS: I called the

20

Judge, John. Vikki took down my

21

message that you decided not to

22

participate in. She's calling the

23

Judge and he'll call me back if she

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can get him. He was not in the

25

office right now.

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MR. CAMPOLIETO: Did you have other questions you want to ask or did you want to wait to get a list of the police chiefs' names?

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MR. SHIELDS: I plan on continuing to ask my questions, John. I plan on you not interrupting and disrupting my deposition.

10

11

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MR. CAMPOLIETO: I'm obstructing this question about the police chiefs' names. We have a list of them and we can give that to you.

14

15

MR. SHIELDS: John, I'm not trying to trick the guy.

16

17

MR. CAMPOLIETO: I don't know how this is even relevant in any way.

18

19

MR. SHIELDS: John, relevance is not an appropriate --

20

21

22

MR. CAMPOLIETO: That's not why I'm objecting. We offered to give you a list.

23

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MR. SHIELDS: I will make a motion for sanctions and you will be sanctioned, I promise you.

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MR. CAMPOLIETO: Elliot, just stop, would you please. I want to do the deposition. I'd like to get it done.

6

MR. SHIELDS: No, you don't.

7

8

MR. CAMPOLIETO: The names we can provide you.

9

10

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12

MR. SHIELDS: John, apparently you don't want to get the deposition done because you are making frivolous objections.

13

14

15

MR. CAMPOLIETO: Okay. Do you want to stop the deposition now at this point?

16

17

18

MR. SHIELDS: John, if you stop the deposition, I guarantee you you will be sanctioned.

19

20

21

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MR. CAMPOLIETO: I guarantee you -- I just asked you if you wanted to stop, not that I was stopping. Do you --

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MR. SHIELDS: If you stop the deposition you will be sanctioned, so don't do either one.

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MR. CAMPOLIETO: You can't tell me when I'm going to get sanctioned. You have no idea. You're sitting here like an authoritative little person, asking my officer to name police chiefs. I can give you a list of the police chiefs.

MR. SHIELDS: John, you've got to let me ask my questions. You've got to stop getting so mad. You're not allowed to make inappropriate objections. You've got to let me ask my questions. You're holding up the deposition.

MR. CAMPOLIETO: -- about the names --

MR. SHIELDS: John, I swear -- John, you need to stop, John. What do you think --

MR. CAMPOLIETO: Do you want to ask another question?

MR. SHIELDS: Please articulate a basis of your objection.

MR. CAMPOLIETO: We have

1

2 offered to give you a list of the
3 names of the police chiefs.

4

5 MR. SHIELDS: John, I don't
6 care. I'm asking him what he knows.
7 I'm asking about -- I asked him a few
8 questions about how the culture of
the department has changed.

9

MR. CAMPOLIETO: The what?

10

11 MR. SHIELDS: I asked him
12 several questions about how the
13 culture of the department has
14 changed. He answered those
15 questions. Now he's had several
16 different police chiefs. Right?
17 They're the policymakers of the
18 department. I don't need to explain
19 to you why I'm asking my questions,
20 but I'm doing this as a courtesy
21 right now. If you continue to object
22 to my questions, I'm going to make a
motion.

23

24 MR. CAMPOLIETO: Then you're
going to have to make a motion.

25

We're objecting to him listing the

1

2 names of the police chiefs. We will
3 provide you with a list.

4 MR. SHIELDS: Okay, John. You
5 know what I'm going to do. I'm going
6 to make a motion and I'm pretty sure
7 you're going to be sanctioned.

8 MR. CAMPOLIETO: Okay. Then
9 we're done with this here?

10 MR. SHIELDS: Are you -- it's
11 up to you. Are you --

12 MR. CAMPOLIETO: It's up to
13 you, Elliot. Are you going to ask
14 another question?

15 MR. SHIELDS: I am going to ask
16 the questions, and I expect him to
17 answer them.

18 MR. CAMPOLIETO: He's not going
19 to answer that question. Do you want
20 to ask another one?

21 MR. SHIELDS: I'm going to keep
22 asking my questions and I'm going to
23 make my record.

24 MR. CAMPOLIETO: I don't know
25 what you're saying.

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MR. SHIELDS: I'm going to
continue with my deposition. If you
keep objecting, it will be on the
record.

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MR. CAMPOLIETO: Go ahead.
Q. Welcome back, Investigator.

A. Hi.

Q. After Cimonelli it was
Singletary. Right?
A. Yes.
Q. And of all the chiefs that
you've worked under, was there one that you
thought was better than the others?

A. I don't know. I was -- I mean
they were -- they were the head of it. I
didn't really have any direct contact with
any of them.

Q. Have you noticed any
differences in the department since
Singletary left and Chief Smith has taken
over?

A. Nothing that's directly
affected me, no.

Q. Has the culture of the

1

2 department changed since Chief Smith took
3 over?

4 A. No.

5 Q. Since the Daniel Prude incident
6 is there any more emphasis on officers not
7 using excessive force?

8 A. No.

9 Q. So nothing has changed in terms
10 of officers' use of force since the Daniel
11 Prude incident?

12 A. I don't think we've had any
13 additional training or anything, no.

14 Q. Okay. So no additional
15 training is what you just said. Right?

16 A. I don't believe so, no.

17 Q. Is there any like discussions
18 at roll calls about how the officers should
19 act differently?

20 A. No.

21 Q. What was the reaction among
22 investigators and officers to the
23 \$12,000,000 settlement?

24 MR. CAMPOLIETO: Objection.

25 A. There wasn't really anything.

1

2 Q. Is that viewed among officers
3 in the department as an admission of
4 liability?

5 A. Admission of liability? Is
6 that what you said?

7 Q. Correct.

8 A. No.

9 Q. So officers in the department
10 still think that the officers that used force
11 against Mr. Prude acted appropriately?

12 MR. CAMPOLIETO: Objection.

13 A. Repeat it again, the question.

14 Q. Do officers in the department,
15 after the \$12,000,000 settlement, still
16 think that the officers who used force
17 against Mr. Prude acted appropriately?

18 MR. CAMPOLIETO: Objection.

19 A. I believe so. They did all the
20 stuff they were trained to do. They didn't
21 do anything out of the normal.

22 Q. Do you personally think that
23 Mark Vaughn acted appropriately?

24 A. I wasn't there. I'm not really
25 aware of the circumstances, so I couldn't

1

2 really comment on what he did.

3 Q. Did you see the video?

4 A. I usually try not to get too
5 involved with the stuff. I didn't watch
6 the body cam or any of that stuff.

7 Q. Is there a general -- among the
8 department did you have conversations with
9 other investigators and officers about the
10 incident?

11 A. No.

12 Q. Do you think Chief Smith is
13 committed to making the reforms to prevent
14 another Daniel Prude incident from
15 happening?

16 MR. CAMPOLIETO: Objection.

17 A. I don't know.

18 Q. Because you haven't seen any
19 changes since he took over?

20 MR. CAMPOLIETO: Objection.

21 A. I think he wants to but I don't
22 really know what his plans are.

23 Q. Have there been any general
24 policy changes in terms of use of force
25 since he took over?

1

2 A. Not that I can recall. Nothing
3 that comes to mind.

4 Q. Okay. I think you testified
5 earlier that there's been no new training
6 on use of force. Correct?

7 A. Correct. Once all the COVID
8 stuff kind of hit, it really stopped a lot
9 of the stuff.

10 Q. Okay. I want to go through
11 some exhibits. Hopefully I'm organized
12 here. I'm going to display them on the
13 screen and ask you some questions. Okay?

14 A. Okay.

15 (Concise officer history was
16 marked as Plaintiff's Exhibit 1 for
17 identification as of this date.)

18 Q. Exhibit 1 is going to be your
19 concise officer history which you said that
20 you reviewed in preparation for this
21 incident. Right? I mean this deposition.

22 A. Yes.

23 Q. Investigator, can you see on
24 your screen the concise officer history?

25 A. Yes.

1

2 Q. I'm just going to scroll down.
3 It's a one-page document I believe. Police
4 Officer Christopher J. Barber. That's you;
5 correct?

6 A. Correct.

7 Q. And I guess this was printed on
8 July 22, 2020. You had been promoted to
9 investigator by that point. Right?

10 A. Yes.

11 Q. Okay. So I guess they just
12 didn't update that in the system, your
13 rank?

14 A. Yeah, probably not.

15 Q. Okay. So my questions about
16 this, Investigator, are it looks like there
17 are a total of two incidents listed. Is
18 that correct?

19 A. Yes.

20 Q. The first one is IA number
21 2015-0129?

22 A. Correct.

23 Q. And then the second one is IA
24 number 2017-0055?

25 A. Correct.

1

2

MR. SHIELDS: For the record,

3

this one-page document is Bates

4

numbered COR000085. That's Exhibit

5

1.

6

Q. My first question is it looks

7

like the 2015 incident just was regarding a

8

vehicle accident. Is that right?

9

A. Correct.

10

Q. Did that involve anything

11

having to do with interactions with a

12

member of the public?

13

A. No. Our parking lot was icy.

14

When I tried to turn the car, it didn't

15

turn and I slid into a fence post.

16

Q. Okay. And the second incident

17

looks like there were two allegations,

18

discourteous/offensive behavior and

19

unnecessary use of force. Is that right?

20

A. Yes.

21

Q. Okay. Do you remember the

22

underlying incident that gave rise to these

23

allegations?

24

A. No.

25

Q. Okay. Is this the incident

1

2 where you spoke with the PSS officer or
3 sergeant as you spoke about earlier?

4 A. I am not sure.

5 Q. Okay.

6 MR. CAMPOLIETO: Can we stop
7 for a second? Don't ask any
8 questions until I return. I'll be
9 right back.

10 (Whereupon, a brief recess was
11 taken.)

12 (Whereupon, Judge Pedersen
13 entered the Zoom Videoconference in
14 person at the Rochester City Hall via
15 Mr. Campolieto's computer.)

16 MR. CAMPOLIETO: Elliot, can
17 you hear me?

18 MR. SHIELDS: I can hear you,
19 John.

20 MR. CAMPOLIETO: We have Judge
21 Pedersen here.

22 MR. SHIELDS: Let me stop
23 sharing the screen for a second.

24 Hello, Judge.

25 JUDGE PEDERSEN: Good afternoon.

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MR. SHIELDS: Would you like to sit in on all of our depositions?

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JUDGE PEDERSEN: I'm sure it would be fascinating but I'm sure the Social Security people would be upset if I didn't read the transcripts and get ready for tomorrow.

9

10

What's the issue? Vikki filled me in a little bit.

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MR. SHIELDS: Vikki explained that she was calling you. I didn't realize that you were going to be over at the City.

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JUDGE PEDERSEN: I was at the Pizza Stop restaurant. You know where that is. Vikki called and I said well, I haven't seen City Hall in a long time so I'll stop over on my way.

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MR. SHIELDS: We were going through some questions that John lodged some objections that I felt were unwarranted and unnecessary, and he had directed his client not to

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2 answer. First I had asked the
3 officer -- I'm sorry, the
4 investigator several questions about
5 the culture in the department and how
6 it has changed since he became an
7 officer in 2007, and he answered
8 those questions. John had not
9 objected. And then I was asking him
10 several questions about which police
11 chiefs he had worked under to
12 establish the culture and any change
13 in the culture in the RPD under
14 various police chiefs. After I asked
15 him about several different chiefs,
16 John directed him not to answer. I
17 told John under Rule 30(C)2 it's an
18 inappropriate objection, relevancy is
19 not an appropriate objection, and
20 that he is not permitted to direct
21 his officer not to answer that
22 question. He's got to make his
23 objection and let him answer. The
24 only appropriate reason to direct a
25 deponent not to answer a question is

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to preserve a privilege, or the other reasons under 30(C)2, which are to enforce the limitation ordered by the court or present a motion under Rule 30(D)3.

JUDGE PEDERSEN: Okay. Mr. Campolieto, why don't you have a seat here so you're on the record. Go ahead and put your side on.

MR. CAMPOLIETO: Your Honor, the question was for my officer -- or the investigator to name the police chiefs in order. He was struggling to do that. We offered to provide a list of police chiefs and interim police chiefs to Mr. Shields. He said no, he was going to ask his questions. I said we'll provide a list and the investigator didn't have to answer, because he was having trouble answering about each chief and interim chief. I told the investigator not to answer that question. It was specific to listing

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the police chiefs he worked under. I offered to provide a list of police chiefs he worked under.

JUDGE PEDERSEN: Mr. Shields?

MR. SHIELDS: He instructed him not to answer. That's an inappropriate objection. He can't instruct him not to answer. He can say I don't know and that's his answer.

JUDGE PEDERSEN: Okay. I have to agree that if a deponent is struggling with the answer, that's fine, you can offer that to Mr. Shields, but it really isn't a proper objection to say you won't answer, or you mustn't answer, or you don't have to answer. It's up to the officer to give his answer, whatever it might be, and it might be I don't know, or I don't remember, or I need to refresh my recollection, something along those lines. We can take it from there.

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Anything further?

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MR. SHIELDS: I think that's all for now, Your Honor. To John's credit, after we went back on the record I asked the question about who the next chief was and John did not object, so --

9

JUDGE PEDERSEN: Okay.

10

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MR. CAMPOLIETO: I think we're past that problem. We'll continue with the deposition. I'm sorry that had to break your lunch up early.

14

JUDGE PEDERSEN: Not a problem.

15

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MR. CAMPOLIETO: Thank you for the in-person service. It's unusual.

17

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MR. SHIELDS: Thank you, Judge Pedersen.

19

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MR. CAMPOLIETO: I'll be back in one second.

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(Whereupon, a brief recess was taken.)

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Q. Investigator, in terms of -- let me just throw that back up for one second here. I'm going to put Exhibit 1

1

2 back up on the screen for you.

3

4 Investigator, is that your
5 concise officer history that you see on the
6 screen again?

6

7 A. If somebody is talking, I don't
8 hear it.

8

9 Q. Can you hear me?

9

10 MR. CAMPOLIETO: Hang on.

10

11 Q. So my question about this
12 document is it says at the bottom received
13 two total. Are those the only two PSS
14 complaints that you've had against you that
15 you know of?

15

16 A. Yes.

16

17 Q. Okay. And I forget what your
18 answer was prior to the Judge joining us.
19 This second 2017 incident, do you remember
20 the underlying facts of what happened in
21 that incident, or the allegations?

21

22 A. No. I'm not sure what it is.

22

23 Q. Okay. And it says that -- I
24 believe the outcome here was officed? Is
25 that what officed means, that that was the
outcome?

1

2 A. Yes.

3 Q. Do you know what officed means?

4 A. I know how I use it. If that's
5 what --

6 Q. Okay. How do you use it?

7 A. So when I office a case, it
8 usually means there's no further that I can
9 go with it but it can be -- it's not
10 closed, it's still open, but there's just
11 not any more to do with it is how I use it
12 in my reports, if it's the same thing.

13 Q. Okay. But you're not sure if
14 it's the same thing when PSS uses it?

15 A. I would assume so because it's
16 all kind of standard with our department.

17 Q. Okay.

18 A. I've never worked with PSS so
19 I'm not sure if they use the same thing. I
20 would assume they would.

21 Q. Okay. So would that mean
22 basically that it's not closed, and if they
23 receive, for example, additional
24 information it can be pursued further?

25 A. I don't know.

1

2 Q. Okay.

3 A. I would assume so because it's
4 the same department.5 Q. Is that how you would consider
6 something that you marked as officed?

7 A. Yes.

8 Q. Okay. But in terms of this
9 2017 incident, did PSS ever contact you to
10 gather any information about what happened
11 there?12 A. I'm not sure what the incident
13 is because I don't see any of the details.14 MR. SHIELDS: Okay. And John,
15 I don't think you ever provided any
16 of the details for that incident, so
17 we'll follow up in writing. I think
18 that we did demand that in our set of
19 demands. If we get it and I need to
20 ask him questions, hopefully we can
21 just do that through interrogatories
22 or something.

23 MR. CAMPOLIETO: Okay.

24 MR. SHIELDS: I will follow up
25 in writing.

1

2 Q. Investigator Barber, have you
3 ever been disciplined for any citizen or
4 internal complaint?

5 A. No. Just a letter of reprimand
6 from the driving thing.

7 Q. Okay. Have you ever had any
8 other incidents where someone complained
9 that you used excessive force, --

10 A. Not that I'm aware of.

11 Q. -- other than the Melinda
12 Santos incident?

13 A. Correct.

14 Q. Okay. I'm going to put down
15 Exhibit 1. Actually, I have this new
16 program. I'm going to put up a second
17 exhibit which is going to be your PDS file.
18 I'm going to ask you some questions about
19 that. That's going to be Exhibit 2.

20 (Investigator Barber's PDS file
21 was marked as Plaintiff's Exhibit 2
22 for identification as of this date.)

23 Q. Investigator, do you see on the
24 screen, I guess this top page here, the top
25 left corner says Investigator Chris Barber?

1

2 A. Yes.

3 Q. Let me just see something going
4 forward. Now you see your concise officer
5 history?

6 A. Correct.

7 Q. Okay, great. My plan worked.
8 I have a few questions about several notes
9 on a couple of pages. Give me one second.

10 MR. SHIELDS: So for the
11 record, this document is marked Bates
12 number COR VANN 027793 to COR VANN
13 027902. I want to go to page 027834.
14 Let's do that.

15 Q. Investigator, do you see at the
16 bottom where that says COR VANN 027834?

17 A. Yes.

18 Q. If we go to the top of this
19 document, it says the date is 1/11/2016.
20 Is that correct?

21 A. Correct.

22 Q. It says the evaluation period
23 is 4/2015 to 12/2015?

24 A. Correct.

25 Q. Do you know why it wasn't for

1

2 the whole year?

3 A. They usually do them once a
4 year. I don't know. Oh, maybe -- was that
5 when the re-org happened?

6 Q. 2015 you think?

7 A. Maybe.

8 Q. Okay. Because this says
9 central first, and that's where you were
10 after the re-org. Right?

11 A. Correct.

12 Q. So if we go down to the second
13 page, can you just read this first
14 paragraph to yourself and then I'm going to
15 ask you some questions about it?

16 (Pause in the proceedings.)

17 A. Okay.

18 Q. So would it be fair to say that
19 it's a good review?

20 A. Yes.

21 Q. And they call you a team player
22 and somebody that everyone gets along with?

23 A. Yes.

24 Q. And you think that's a fair
25 review, you get along with all of your

1

2 peers?

3 A. Yes. Generally, yes.

4 Q. That's part of the reason you

5 became a police officer. Right?

6 MR. CAMPOLIETO: Objection.

7 A. Yes.

8 Q. And we had just looked at your

9 concise officer history and you've had only

10 a few complaints in your career. Right?

11 A. Correct.

12 Q. So do you think that you

13 generally get along with the citizens that

14 you interact with also?

15 A. Yes.

16 Q. Why do you think you get along

17 with everybody? Hold on. Let me withdraw

18 that. Getting along with both your peers

19 in the department and the citizens that you

20 interact with is an important characteristic

21 to be a successful police officer. Right?

22 MR. CAMPOLIETO: Objection.

23 A. Repeat it one more time.

24 Q. Being able to get along with

25 both your co-workers and with the citizens

1

2 that you interact with is important to your
3 role as a police officer. Right?

4 MR. CAMPOLIETO: Objection.

5 A. Correct. Just usually being
6 polite helps us understand one another.

7 Q. And when you say one another,
8 you mean both police officers --

9 A. Police officers and citizens.

10 Q. I'm sorry. Both police
11 officers and citizens. Right?

12 A. Correct.

13 Q. It helps you to solve
14 crimes, --

15 A. Yes.

16 Q. -- having a good rapport with
17 the citizens you interact with?

18 A. Yes.

19 Q. Otherwise they don't want to
20 give you information to help you solve
21 crimes. Right?

22 A. You just have to have a good
23 attitude.

24 Q. Okay. And where do you think
25 your good attitude came from?

1

2 MR. CAMPOLIETO: Objection.

3 A. I don't know. I'm just a nice
4 guy.

5 Q. I mean is that something that
6 the RPD trains its officers to do, to be a
7 nice guy when you interact with citizens?

8 MR. CAMPOLIETO: Objection.

9 A. We're generally told it helps
10 to listen and stuff, but just kind of in
11 general it makes sense to be nice.

12 Q. Do you think that's one of the
13 reasons that you've had very few citizen
14 complaints in your career?

15 A. Could be, yeah.

16 Q. In general do you think that
17 you've had fewer citizen complaints than
18 other officers?

19 MR. CAMPOLIETO: Objection.

20 A. I don't know. I'm not sure of
21 everybody's history.

22 Q. Would you agree with me that
23 two citizen complaints in a fifteen-year
24 career is a pretty low number. Right?

25 MR. CAMPOLIETO: Objection.

1

2 Just to clarify the record, they are
3 both not citizens complaints.

4 MR. SHIELDS: That's true.

5 Q. Would you agree with me that
6 one citizen complaint in a fifteen-year
7 career is a very low number?

8 A. I've always been nice to
9 everybody, so I'm even surprised I have
10 one.

11 Q. The goal should be to have
12 zero. Right?

13 A. It should be, but sometimes
14 people just say things and you can't help
15 it.

16 Q. You can't control what other
17 people do. Right?

18 A. Correct.

19 Q. You can only control your own
20 actions. Right?

21 A. Yup.

22 Q. And being a nice guy and being
23 courteous when you interact with citizens,
24 apparently in your career has led to only
25 one citizen complaint. Right?

1

2 MR. CAMPOLIETO: Objection.

3 A. Correct.

4 Q. Now some officers, I can
5 represent to you based on the records, have
6 many more than one citizen complaint. Does
7 that sound like, you know, an accurate
8 statement to you?

9 A. I don't know.

10 Q. Some people would have one like
11 you, some people would have more than one.
12 Right?

13 A. Yeah, I guess.

14 Q. Do you know of any officers in
15 the department who have a reputation for
16 using excessive force?

17 A. No. Not really.

18 Q. How about Michael Feldman or
19 Michael Stephens?

20 A. I know of him. I worked with
21 him for a little while but I've never had
22 any direct problems with him.

23 Q. And Michael Feldman or Michael
24 Stephens, he is no longer with the
25 department. Right?

1

2 A. I think he's on afternoons
3 somewhere.

4 MR. SHIELDS: Okay. Before I
5 get ahead of myself, I'm going to put
6 up Exhibit 3 which is a subject
7 resistance report from -- I'll just
8 put it up and then ask you questions
9 about it.

10 (Subject resistance report CR#
11 11-393543 was marked as Plaintiff's
12 Exhibit 3 for identification as of
13 this date.)

14 Q. So this is Exhibit 2 still.
15 Exhibit 3, do you see what looks like a
16 subject resistance report with the subject
17 name Andrea Rugg in the top left corner?

18 A. Can you just scroll down a
19 little more so I can see the side? Yes.

20 Q. Okay. And it's dated 12/16/2011?

21 A. Okay.

22 Q. So I'm just going to go to the
23 narrative section which is kind of long.

24 I'll ask you to read that and then --
25 first, do you see all of the officers

1

2 listed here?

3 A. Yes.

4 Q. Okay. So Michael Feldman is

5 the first one, and then two down

6 Christopher Barber. That's you?

7 A. Correct.

8 Q. And just if you can just read

9 it, let me know when you're done reading it

10 and then I just have a couple of questions

11 about this. Are you on a computer that's

12 large enough for you to read this? Do you

13 need me to zoom in at all?

14 A. I think it should be all right.

15 (Pause in the proceedings.)

16 A. Okay.

17 Q. So my first question is this

18 number in red on the left, do you know what

19 that number is?

20 A. I do not.

21 Q. Okay. Up here at the top it

22 says PSS. Do you know why that says PSS?

23 A. I'm guessing it's their copy of

24 the SRR.

25 Q. Could the red number be the PSS

1

2 number?

3 A. It could be something

4 internally I guess, but I don't know.

5 Q. It's not a number that like

6 looks familiar based on what the numbers

7 look like to you?

8 A. No. I would guess the CR

9 number, but the CR number is in the top

10 right corner and they're different.

11 Q. Okay. So it's not the CRR

12 number, it's something else?

13 A. Correct.

14 Q. That was my first question. My

15 second question is do you know if PSS

16 investigates every incident where there's a

17 subject resistance report?

18 A. They get a copy of every

19 subject resistance report.

20 Q. They get a copy. Do you know

21 what they do after they get a copy?

22 A. I've never worked there. No.

23 Q. Okay. You've never worked

24 there, but just based on your fifteen years

25 with the department, you don't have any

1

2 knowledge either?

3 A. Correct.

4 Q. Okay. Now the incident

5 described in this subject resistance

6 report, there was a mental health law

7 arrest. Right? That's what happened here?

8 A. Yes.

9 Q. Is that a common occurrence in
10 the City of Rochester?

11 A. Yes.

12 Q. Okay. So this is, I guess, a
13 typical interaction that officers would
14 have with people in the City of
15 Rochester, --

16 MR. CAMPOLIETO: Objection.

17 Q. -- somebody with mental health
18 issues?

19 MR. CAMPOLIETO: Repeat the
20 question.

21 A. Yes. It's not uncommon but
22 it's not all the time.

23 Q. Okay. So not uncommon. It's
24 something that's somewhat frequent at
25 least?

1

2 MR. CAMPOLIETO: Objection.

3 A. I don't think I could put a
4 number on it.

5 Q. Okay.

6 A. They do occur.

7 Q. I think I said -- at first I
8 said common, you said yeah, then I said
9 typical. Those are two obviously different
10 words. It's something that happens and the
11 officers deal with. Correct?

12 A. Correct.

13 Q. In your fifteen years with the
14 department, you've had a few -- at least
15 this one incident where somebody has been
16 mental health law arrested?

17 A. Yes.

18 Q. You've had other incidents
19 after this one?

20 A. I don't recall but I would
21 assume so, yes.

22 Q. Okay. Can you tell me all the
23 training that you've received from the RPD
24 about dealing with people who have mental
25 health issues?

1

2 A. We've had in the academy. I
3 know we've had an in-service about it. I
4 don't know that I can give you details
5 about them.

6 Q. Okay. So first you said at the
7 academy. Right?

8 A. Correct.

9 Q. Okay. Tell me everything you
10 remember about the academy training for
11 dealing with people with mental health
12 issues?

13 A. It was a long time ago. Pretty
14 much I just took away from it just kind of
15 what I do, be polite and try to listen and
16 understand them, see if you can help them.

17 Q. Okay. You don't remember any
18 of the like specific, I don't know, courses
19 from the academy about dealing with people
20 with mental health issues?

21 A. No details about it, no.

22 Q. Okay. You said that there were
23 a couple in-services also?

24 A. I think so. I know we
25 definitely had one. I think there was

1

2 another one.

3 Q. Okay. So one and maybe two in-
4 services?

5 A. Correct.

6 Q. Okay. What do you remember
7 about the first in-service?

8 A. I think it was just kind of a
9 refresher. Nothing that I can really
10 remember differently.

11 Q. My understanding of a refresher
12 is that sometimes they're like a roll call
13 training in the mornings?

14 A. I think we went to the academy
15 for that one, though. It wasn't a roll
16 call one. I think we might have spent
17 maybe a day or half a day at the academy to
18 do it.

19 Q. Okay. In the academy, that's
20 the one I forget the location.

21 A. I'm sorry. The training
22 facility. Not the public safety training
23 facility. We went there for the day.

24 Q. And that's on Scottsville?

25 A. Correct.

1

2 Q. What do you remember about that
3 training?

4 A. It's been years. I couldn't
5 give you any details.

6 Q. Okay. Do you remember if it
7 was before or after the incident with David
8 Vann in September 2015?

9 A. I think it was years before
10 then.

11 Q. Okay. There might have been a
12 second one, you said, but you don't
13 remember?

14 A. Yeah. I don't recall
15 specifically.

16 Q. Okay. So if you don't recall
17 specifically, would it be fair to say you
18 don't recall if it was before or after
19 2015?

20 A. Correct.

21 Q. Okay. Since the Daniel Prude
22 incident has the department held any
23 trainings, to your knowledge, about dealing
24 with people with mental health issues?

25 A. I know we had some trainings

1

2 but I don't know if they were specific to
3 the incident. Not that I can recall.

4 Q. Okay. What trainings have been
5 held since the Daniel Prude incident?

6 A. There's -- I don't think it was
7 anything specific. I know we had maybe a
8 domestic violence one recently, but that's
9 -- now we get a lot of videos. The one
10 that I had on Friday for the active shooter
11 thing. Those are really the only two that
12 I can remember that come to mind.

13 Q. Okay. So just to be clear,
14 since the Daniel Prude incident you don't
15 think the department has held any specific
16 trainings because of that incident. Is
17 that correct?

18 MR. CAMPOLIETO: Objection.

19 A. I know we've had trainings, but
20 nothing I can remember that was because of
21 this, we're having this.

22 Q. Okay. And you remember a
23 domestic violence training that you've done
24 since the Daniel Prude incident?

25 A. Correct. I think that was --

1

2 that one might have been an online course
3 that we had to do.

4 Q. Okay. When you say that we had
5 to do, does that mean -- let me pull down
6 this document for now. Does that mean that
7 it was a required training that all
8 officers had to take?

9 A. Yes. I think every year we
10 have to do an internet security, a sexual
11 harassment thing, and there might have been
12 one more. I don't remember what it is
13 specifically.

14 Q. In addition to firearms training?

15 A. Correct.

16 Q. So you said sexual harassment
17 and internet security?

18 A. Yeah. I think there's maybe
19 three things, and those are usually online.

20 Q. Those three things that you do
21 every year, are those topics the same
22 required topics every year?

23 A. I don't know. I know that
24 subject. I don't really recall from year
25 to year what the topics are.

1

2 Q. What I mean is, for example,
3 every year you have to do three credits of
4 training, for example, or is it every year
5 you have to do a sexual harassment, an
6 internet security and maybe something else?

7 A. Correct. Yes to the last one.

8 Like there's a sexual harassment one we
9 have to watch, there's an internet safety
10 one that just like talks about phishing and
11 spam and stuff like that.

12 Q. So for example, there's no
13 required annual training about dealing with
14 people who have mental health issues?

15 A. No.

16 Q. I just had a couple other
17 questions on that subject resistance
18 report. I'm going to put it back up, --

19 A. Okay.

20 Q. -- Exhibit 3. You said, I
21 think, that dealing with people with mental
22 health issues was either a common thing or
23 a not uncommon thing. Right?

24 Do you see down here where it
25 says this person had recently been arrested

1

2 for an MHA on 12/7/11?

3 A. Yes.

4 Q. So this specific person, at
5 least, had ongoing issues, apparently, and
6 had been repeatedly arrested for MHAs.

7 Right?

8 MR. CAMPOLIETO: Objection.

9 A. She at least had a recent one.

10 Q. Okay.

11 A. I don't know her -- I don't
12 know of her history at all.

13 Q. Okay. So this was 12/16/11.
14 Right?

15 A. Yeah.

16 Q. And then this said 12/7/11. So
17 two in a week or so?

18 A. Yup.

19 Q. This middle section describes
20 the force used. Right? So here it was --
21 or the use of force continuum would be more
22 fair, I guess, because it's verbal and
23 that's not physical force?

24 A. I think those are like
25 technique check boxes.

1

2 Q. Okay.

3 A. Because they're trained, we
4 don't have to explain them.5 Q. Got you. So first it's verbal,
6 and then that says 1. So that's the first
7 thing that was attempted. Right?

8 A. Correct.

9 Q. And then ground stabilization
10 was second and third?

11 A. Yes.

12 Q. Okay. 3-point landing, joint
13 manipulation?14 A. Those are examples of ground
15 stabilization.16 Q. Okay. So there were two
17 techniques, apparently, used with ground
18 stabilization here. Right?

19 A. Correct.

20 Q. Because on the narrative, what
21 was -- let's see. It looks like your role
22 was -- did you do anything here other than
23 get out the hobble and give it to Feldman?24 A. No. I used to wear mine around
25 my waist. Because I've been kicked a few

1

2 times, so I like to have it with me. Some
3 people go to their cars to get it, and
4 that's not helpful.

5 Q. What is the hobble?

6 A. It was a tool that we were
7 provided in the academy. It's to -- you
8 cross their legs and it keeps them from
9 being able to kick you. They cross their
10 legs and then you draw it tight around
11 their -- around their ankles.

12 Q. Okay. Is it like a rope?

13 A. Yeah. I mean that's probably
14 the simplest way to describe it.

15 Q. Okay. So it's something to put
16 around a subject's legs, is basically what
17 a hobble is?

18 A. The ankles.

19 Q. Ankles. Okay. I didn't know
20 what it was, so thank you. It looks like
21 he used the hobble, right, and it was
22 effective?

23 A. Yes.

24 Q. Okay. I think that's all my
25 questions on that for now.

1

2

3

4

Back to Officer Stephens, or
Officer Feldman. First, do you know why he
changed his name?

5

6

A. No. That was for personal
reasons. I don't know why.

7

8

9

10

Q. Okay. It just makes the
reports a little confusing. Do you know of
any other instances where he was found to
have used unnecessary force?

11

12

A. Nothing that specifically comes
to mind.

13

14

15

16

17

Q. Okay.

MR. CAMPOLIETO: Objection. We
haven't established that he used
unnecessary force. That's just a
subject resistance report.

18

19

20

21

22

23

MR. SHIELDS: Sure.

Q. Are you aware that in the
incident with Dudley Scott, he was alleged
to have repeatedly punched Dudley Scott in
the face and blinded him in one eye and was
-- that complaint was substantiated by PSS?

24

25

A. I don't know Dudley Scott or
that incident.

1

2 Q. Okay. So you've never heard of
3 that incident?

4 A. Nope.

5 Q. Okay. And you've never heard
6 of any person by the name of Dudley Scott
7 suffering blindness in one eye as a result
8 of a force incident with RPD?

9 A. I'm not familiar with that, no.
10 MR. CAMPOLIETO: Objection.

11 Q. Okay. In general, it sounds
12 like if there's an incident like that then,
13 that it's not something that, for example,
14 would be brought up at a roll call to say
15 hey, this happened, don't do that?

16 A. Not usually, no.

17 Q. Okay.

18 MR. CAMPOLIETO: Objection.

19 Q. I'll represent to you that the
20 City of Rochester settled that case with
21 Dudley Scott who brought a lawsuit for
22 \$750,000. Were you aware of that?

23 A. No.

24 Q. Okay. So it would be fair to
25 say then that that's also not something

1

2 that would be discussed at a training or a
3 roll call saying hey, don't do what Officer
4 Stephens or Officer Feldman did during this
5 incident because, one, you could be
6 disciplined by PSS; and two, it could cost
7 the City \$750,000 or more?

8 MR. CAMPOLIETO: Objection.

9 A. Nothing that specific. I mean
10 there might be a training after but we
11 don't get any details why or the reason for
12 it.

13 Q. And that's really what I'm
14 trying to get at. If there are incidents
15 that happen within the RPD, if they're
16 discussed internally at roll calls or other
17 trainings, does that ever happen?

18 MR. CAMPOLIETO: Objection.

19 Could you repeat the question,
20 please?

21 MR. SHIELDS: Sure.

22 Q. The question is if there's
23 something specific like this Dudley Scott
24 incident or the Daniel Prude incident, are
25 those ever used as examples at roll call or

1

2 other trainings to say this bad thing
3 happened, this is what went wrong, do
4 something different instead?

5 MR. CAMPOLIETO: Objection. Go
6 ahead.

7 A. So we could get a training as a
8 result of it but we don't get specific
9 examples of why we're getting the training.
10 Does that make sense?

11 Q. Sure. What's the last training
12 that you remember getting as a result of a
13 specific incident that happened at the RPD?

14 MR. CAMPOLIETO: Objection.

15 A. I can't say any because we're
16 not told we're doing this because this
17 happened. That's usually not how they're
18 associated.

19 Q. Okay. Do you have a hunch that
20 you had a training as a result of an
21 incident in the past?

22 A. I don't know.

23 Q. But you believe that to be the
24 case?

25 MR. CAMPOLIETO: Objection.

1

2 A. I don't know.

3 Q. Okay. Look, I'm just confused
4 from your answer, so that's all I'm trying
5 to understand, because I think what you
6 said was that there can be trainings as a
7 result of an incident but they don't tell
8 you specifically that the training is
9 happening because of an incident?

10 A. Because of a specific incident.
11 So like you brought up the Feldman thing.
12 There could be a training as something as a
13 result of that but we won't be told this is
14 what happened, this is why we're doing
15 this.

16 Q. Okay. So for example, I'll
17 represent to you that the allegations in
18 the Dudley Scott incident were that he was
19 handcuffed at the time force was used
20 against him by Officer Feldman. Have you
21 ever gotten training that it's
22 inappropriate to use force against a
23 handcuffed subject?

24 MR. CAMPOLIETO: Objection.

25 You can answer.

1

2 A. I don't think we've ever been
3 told that specifically, no.

4 Q. Okay. In what instances is it
5 appropriate to use force against a
6 handcuffed subject?

7 A. I have had a handcuffed person
8 kick me before and I've applied a hobble,
9 but I mean that's kind of the only specific
10 thing I can give you.

11 Q. Okay.

12 A. That's for me.

13 Q. So if I represent to you that
14 Dudley Scott was handcuffed and had been
15 punched in the face several times by
16 Officer Feldman, just knowing those facts,
17 would that sound like an inappropriate use
18 of force to you?

19 MR. CAMPOLIETO: Objection.

20 A. I don't know any details about
21 it or any -- any specifics about it, so
22 I --

23 Q. Sure. As an officer with
24 fifteen years of experience, under what
25 circumstances would it be appropriate to

1

2 punch a handcuffed subject in the face?

3 MR. CAMPOLIETO: Objection to
4 the question.

5 A. I don't know.

6 Q. You don't know as in it would
7 be inappropriate under most circumstances?

8 MR. CAMPOLIETO: Objection.

9 A. I don't know any of the
10 circumstances with it. I mean there's --
11 there's things that can always go wrong. I
12 don't know.

13 Q. So are you saying that under
14 some circumstances it might be appropriate
15 to punch a handcuffed subject in the face?

16 MR. CAMPOLIETO: Objection.

17 A. I mean if you miss maybe a
18 knife or something on the search and now
19 the guy has something. I couldn't give
20 details with such a broad example.

21 Q. So that's what I'm asking, if
22 you can fill in some kind of detail. Right
23 there you said maybe if you missed a knife
24 in the search. Right?

25 A. Yeah. But again, I don't think

1

2 that's -- you asked for an example. That's
3 kind of all I -- I don't know.

4 Q. On the force continuum, where
5 would a punch in the face fall on 1 to 4?

6 A. I think a distractionary jab is
7 a level 2 maybe, I think.

8 Q. So the guidance is basically
9 that the use of force has to be reasonable
10 under the circumstances. Is that right?

11 MR. CAMPOLIETO: Objection.

12 A. Yeah. I mean we had training
13 on the continuum and stuff like that.

14 Q. Okay. And so when is it
15 appropriate to use level 2 force?

16 A. I'm sorry. What level?

17 Q. Level 2 force.

18 A. 2. So there's officer/subject
19 factors. I mean proximity to weapons,
20 stuff like that. I mean it's early in the
21 continuum.

22 Q. When you say officer/subject
23 factors, what does that mean?

24 A. Sure. So if you have a 5'
25 tall, 80 pound female and a 300 pound, 6'5"

1

2 foot guy, she's obviously at a disadvantage
3 where she could maybe use pepper spray
4 earlier than somebody else.

5 Q. So in that instance, what
6 you're saying is because the officer is so
7 much larger than the subject, you have to
8 take that into consideration?

9 A. Yeah. It's considered in the
10 officer/subject factors.

11 Q. Okay. What other factors are
12 there?

13 MR. CAMPOLIETO: Objection.

14 A. That's kind of the biggest one
15 that comes to mind.

16 Q. Okay. I've got a few other SRRs
17 I want to show you and ask you questions
18 about.

19 MR. CAMPOLIETO: Mr. Shields,
20 this Investigator has a child pick-up
21 requirement at 2:30. Just so you're
22 aware. I understand that you have
23 seven hours to depose him.

24 THE WITNESS: At 2:00 I have to
25 leave. 2:30 I kind of have to be

1

2 home, if it's possible. If not, I'd
3 have to take a break to make a
4 handful of phone calls.

5

6 MR. SHIELDS: Okay. John,
7 look, these are the types of things
8 we've got to talk about before the
9 deposition starts.

10

11 MR. CAMPOLIETO: Elliot, so you
12 know, I didn't know that. Because I
13 didn't know we were going to try to
14 use this investigator as a use of
15 force expert.

16

17 MR. SHIELDS: We've got to talk
18 beforehand. I do plan to ask my
19 questions and --

20

21 MR. CAMPOLIETO: If it goes
22 past 2:00 we'll allow you to bring
23 him back.

24

25 THE WITNESS: I apologize. I
just told him this afternoon when I
got here.

26

MR. CAMPOLIETO: You don't have
to say.

27

Like I said, I didn't know

1
2 until this morning.

3 MR. SHIELDS: We can go --
4 let's do this. I've got a few other
5 questions and then there should
6 either be a natural break or we'll
7 just break at 2:00 and then figure
8 out a convenient time to bring him
9 back.

10 MR. CAMPOLIETO: If you want to
11 ask him questions about the actual
12 incident we're here for, we can do
13 that. We'll set up so you have 11:00
14 until whenever you're done. That
15 will be the time that's expired and
16 then we'll give you the rest of the
17 seven hours.

18 MR. SHIELDS: All this talk and
19 stuff is going to get cut out, too.
20 I don't think the total is going to
21 get anywhere near seven hours. 11 to
22 2 is only three hours. It's half of
23 my seven hours.

24 MR. CAMPOLIETO: You'll get
25 your seven hours. You can have at it

1

2 with Officer Barber whenever you
3 want.

4 MR. SHIELDS: He's such a nice
5 guy, I just like chatting.

6 I didn't mean that facetiously,
7 Investigator. Anyway, I'll just
8 continue to roll through and we'll
9 either take a break at a natural spot
10 or we can break at 2.

11 (Subject resistance report, CR#
12 15-047046 was marked as Plaintiff's
13 Exhibit 4 for identification as of
14 this date.)

15 Q. This is going to be Exhibit 4.
16 I'm going to ask you to read this one, and
17 then I'm going to ask you to read two
18 others, and then I'm going to ask you
19 questions about this.

20 Okay. So this one is an
21 incident from February 28, 2015. Right?

22 A. Yes.

23 Q. Okay. And then the same
24 question as before. Do you know what this
25 number at the top is, the red number that

1

2 says 2015-0244?

3

4 A. I would assume, again like the
5 last one, it's probably a PSS thing because
6 it doesn't match the CR number. It's got
7 PSS in the top corner.

7

8

9 Q. The subject's name is Chad
10 Welch?

9

10 A. Yes.

10

11 Q. So this is one of your SROs,
12 correct?

12

13 A. Yes.

13

14 Q. You're the primary officer. So
15 it's got, I'll just tell you right now,
16 this first page and then another page of
17 narrative. I'm going to ask you to read
18 this first page and then let me know when
19 you're done and I'll go down to the third
20 page.

20

21 A. Okay.

21

22 (Pause in the proceedings.)

22

23 A. Can you scroll down to the
24 second part?

24

25 (Pause in the proceedings.)

25

 A. Okay.

1

2 (Subjection resistance report,
3 CR# 16-221860 was marked as
4 Plaintiff's Exhibit 5 for
5 identification, as of this date.)

6 Q. I'm going to put up Exhibit 5
7 and ask you to read that one. Again, so
8 this one is an SRR dated August 26, 2016.
9 Again, it's got a red number at the top.
10 It says 2016-0958. Again, that's different
11 than the CR number. Right, Investigator?

12 A. Correct.

13 Q. The CR number is 16-221860.
14 The subject's name is Demont Lightle. So
15 this is a two-page document. The narrative
16 is just right here. I'm going to ask you
17 -- at the bottom, again you're the primary
18 officer. Right?

19 A. Yes.

20 Q. So just read that and then I'm
21 going to -- let me know when you're done
22 reading it.

23 (Pause in the proceedings.)

24 A. Okay.

25 (Subject resistance report CR#

1

2 11-371822 was marked as Plaintiff's
3 Exhibit 6 for identification as of
4 this date.)

5 Q. I'm going to show you one more
6 SRR and then I'm going to ask you some
7 questions. So the third one is going to be
8 Exhibit 6. It's from 11/25/2011. The
9 subject's name looks like Cindy Hernandez.
10 The number on the side is 2011-1390.
11 Again, that's different from the CR number.
12 Right, Investigator?

13 A. Correct.

14 Q. The CR number is 11-371822. So
15 again, let's see. It's a two-page document.
16 In this one you're the listed -- you're the
17 assisting officer since you're not listed
18 as the arresting officer. Is that right?

19 A. I'm not familiar with this one.
20 Sometimes we're just assisting if our name
21 is on the job card. I might not have been
22 there. I'm not familiar with this one. I
23 haven't read it yet.

24 Q. That is fair. I was just going
25 to ask you before we do read it, that -- so

1

2 there's three officers listed. In these
3 boxes -- box 15 here, generally do you know
4 why people would be listed here other than
5 the primary officer?

6 A. Your name only has to be on the
7 job card. You don't even have to be
8 involved in it. If your name is on the job
9 card, you get tossed on the bottom.

10 Q. It's sort of like you were
11 assumed to be a witness?

12 A. You don't even have to be a
13 witness. If your name is on the job card,
14 you get tossed on the bottom.

15 Q. Okay. Does that always happen
16 for everybody that's on the job card?

17 A. It changed awhile ago to then
18 your name was only on there if you were
19 assisting. It's changed a couple of times.

20 Q. Okay. And this is an older one
21 from 2011. Okay. Can you just read the
22 narrative and let me know when you're done?

23 (Pause in the proceedings.)

24 A. Okay.

25 Q. So after reading these three

1

2 subject resistance reports, is it fair to
3 say the common thing among those three
4 different incidents is that someone was
5 pepper sprayed in the back of a police car?

6 A. Yes.

7 Q. Okay. The reason that they
8 were pepper sprayed was because they were
9 kicking the window of the car?

10 A. They were disobeying verbal
11 commands.

12 Q. Okay. So they were in the back
13 of a police car and disobeying verbal
14 commands, and so then you -- well, I guess
15 in Exhibit 4 and Exhibit 5, in those
16 incidents you pepper sprayed them. In
17 Exhibit 6 Officer Carey pepper sprayed the
18 person because they were disobeying verbal
19 commands?

20 A. Correct.

21 Q. The verbal commands were to not
22 kick the window?

23 A. In sum and substance, yeah.

24 Q. Okay. Going back to 2011 at
25 least, pepper spraying people who were

1

2 kicking the window in the back of a police
3 car, that's like something that's, I guess
4 at least in these three instances, been
5 okay? That was a bad question. You're
6 allowed to pepper spray people if they're
7 kicking the window in your car?

8 A. Again, that goes to the level 2
9 on the continuum, if they're not following
10 the verbal commands.

11 Q. So why would you give them a
12 verbal command to stop kicking the window?

13 A. Well, because they're kicking
14 your window and you don't want it broken
15 out.

16 Q. You get in trouble if you mess
17 up your car. Right?

18 A. Well, we're not in trouble.

19 Q. Could they be charged with a
20 crime if they break the window in your car?

21 A. Yes.

22 Q. So you would rather not charge
23 them with a crime? You would rather not
24 have a broken window, you pepper spray
25 them?

1

2 A. I'd also rather not have them
3 cut themselves on broken glass. I mean
4 there's multiple reasons.

5 Q. In general, if someone is irate
6 and kicking the window in the back of your
7 car, you're going to do something to try to
8 get them to stop. Right?

9 MR. CAMPOLIETO: Objection.

10 A. Yes.

11 Q. And I mean, look, you know, I'm
12 not trying to trick you. You weren't
13 disciplined in either one of these
14 instances?

15 A. Right. Correct. In these
16 three scenarios they were pepper sprayed.
17 Yes.

18 Q. And the PSS received copies of
19 these subject resistance reports. For
20 Exhibits 4 and 5 where you were the one
21 that pepper sprayed them, there was no
22 discipline imposed. Correct?

23 MR. CAMPOLIETO: Objection.

24 A. Correct. Nothing that I know
25 of or recall.

1

2 Q. And they were reviewed by your
3 supervisor and your supervisor didn't
4 impose any discipline. Correct?

5 A. Two supervisors. This one
6 looks like Sergeant Potuck and Lieutenant
7 Malley.

8 Q. And then on Exhibit 5, that
9 would have been -- let's see. Can you read
10 those ones?

11 A. I think that's Sergeant
12 Zimmerman. I think Temporary Lieutenant --
13 I'm not positive. Can you go up?

14 Q. To the date?

15 A. That was central section, so
16 that was probably Temporary Lieutenant
17 LaFave I would assume.

18 Q. Okay. In August 2016?

19 A. Yeah. At that time I was in
20 central, so it probably would have been
21 him.

22 Q. Okay. And after the signature,
23 this is their IBM number or something?

24 A. Correct.

25 Q. Okay. So basically there was,

1

2 in both of those instances, a reviewing
3 supervisor and a platoon commanding officer
4 who reviewed the subject resistance report
5 and said okay, someone is kicking your
6 window, you pepper sprayed them, you know,
7 that's in line with RPD training and
8 policies?

9 MR. CAMPOLIETO: Objection.

10 A. I believe so, yes.

11 Q. Okay. Because you don't
12 remember ever being talked to about pepper
13 spraying somebody who was kicking your
14 window. Right?

15 A. Correct.

16 Q. Okay. Have there been other
17 instances where somebody has been in the
18 back of your car and they have been irate
19 and kicking the window and you pepper
20 sprayed them?

21 A. It's possible. I mean I
22 couldn't give you a specific example.

23 Q. Okay. In general, if someone
24 is in the back of your car kicking the
25 window, you're going to get them to try to

1

2 stop. Right?

3 A. Yes.

4 Q. I'm going to go back to the
5 first one and ask a couple other questions
6 about that one. In general, what happened
7 here was you responded to a call for a man
8 with a gun. He stopped, you searched him.
9 You didn't find a gun?

10 A. No. He took off running before
11 I was able to search him.

12 Q. Okay. He took off running,
13 then what happened?

14 A. We fell to the ground. I think
15 then I was able to get him handcuffed and
16 then searched him after that.

17 Q. Okay. And then what happened?

18 A. I put him in the car.

19 Q. Okay. And why did you put him
20 in the car?

21 A. To secure him. I'm not -- is
22 that what you're -- I'm not positive on
23 what the question is. We usually put --
24 after they're searched, we usually secure
25 people in the back of our car. I mean at

1

2 that point I hadn't talked to the caller or
3 anything else. We just had the call from
4 911.

5 Q. What happened after you put him
6 in the back of the car?

7 A. He wouldn't put his legs in so
8 I had to move his legs and then close the
9 door.

10 Q. Okay. When you searched him
11 you didn't find a gun. Right?

12 A. Correct.

13 Q. Okay. You put him in the car,
14 you put his legs in the car because he was
15 under arrest?

16 A. At that time we were still
17 investigating. I didn't know.

18 Q. Okay. Eventually he was placed
19 under arrest?

20 A. I don't remember. Is there a
21 report with this or just the SRR?

22 Q. All that I have is the SRR.

23 A. Okay. Can you go back up? I
24 think there's a charges section.

25 Q. Okay. Would that be on the

1

2 first page --

3 A. Yes.

4 Q. -- at the top?

5 A. It looks like harassment OGA.

6 Q. Okay. What did he do that
7 constituted probable cause to arrest him
8 for harassment?

9 MR. CAMPOLIETO: Objection.

10 A. I don't remember. I don't have
11 the report. This was obviously some time
12 ago.

13 Q. What did he do that provided
14 probable cause to arrest him for OGA?

15 MR. CAMPOLIETO: Objection.

16 A. Again, I don't have the report.

17 Q. Assuming that the report says
18 the same thing in the narrative section as
19 the narrative section of the SRR, do you
20 believe now, reading it again, that you had
21 probable cause to arrest him for harassment
22 and OGA?

23 MR. CAMPOLIETO: Objection.

24 A. The report is going to have the
25 details to substantiate the charges, not

1

2 the SRR.

3

Q. Okay. Assuming that he was charged with harassment and OGA, based on the allegations in the narrative section in the subject resistance report, was he charged -- would he have been charged simply from running away from you?

9

MR. CAMPOLIETO: Objection.

10

A. I don't have the details that would have been in the report for it. I don't remember the specifics.

13

Q. Is it unlawful for someone to run away from the police?

15

MR. CAMPOLIETO: Objection.

16

A. There's -- not to run away, no.

17

Q. Okay. So he would have had to do something more than run away from you to --

20

A. There would have been more details involved, yes. It's probably documented in the report or on the call, which I don't have.

24

Q. Okay. Either way, this incident and the incident in number 5,

25

1

2 neither one of these dates, or assuming
3 that these numbers at the top are PSS
4 numbers, neither of these incidents were
5 listed in your concise officer history
6 which was marked as Exhibit 1. Correct?

7 A. Correct.

8 Q. And with respect to the two
9 incidents listed in Exhibit 4 and Exhibit
10 5, no one from PSS ever spoke to you about
11 either one of those incidents. Right?

12 A. Not that I recall, no.

13 Q. Okay. And I think you
14 testified earlier that you only recall ever
15 speaking with PSS about one incident ever?

16 A. It might have been twice for
17 the same one.

18 Q. Maybe twice for the same
19 incident?

20 A. I think so.

21 Q. And that was an incident that
22 you were not the officer who used force,
23 you were a witness. Is that right?

24 A. How's the best way -- I wasn't
25 listed on the complaint but I was on the

1

2 scene.

3 Q. Okay. Do you know who the
4 officer was that was complained about?

5 A. That was years ago. No, I
6 don't remember.

7 Q. Do you remember about what year
8 it was?

9 A. It was when I was in central
10 section still as an officer. Probably
11 three or four years.

12 Q. Okay. And it wasn't the
13 incident involving my client, David Vann.
14 Correct?

15 A. No.

16 Q. With regard to the use of
17 pepper spray, what is the minimum distance
18 that you're allowed to use pepper spray
19 from?

20 A. I don't recall. I know it's
21 not supposed to be like, you know, two,
22 three inches away, but I don't remember
23 what the recommended distance is.

24 Q. Okay. Can you tell me
25 everything that you remember about your

1

2 training regarding the use of pepper spray?

3

4 A. That was in the academy like
5 fifteen years ago. I don't know. Kind of
6 a short burst. That was really -- I don't
7 think we were given like, you know, a time
8 or a second. I think it was just described
9 as a short burst.

9

10 Q. Okay. Short bursts, and a few
11 minutes ago you said not to do it from
12 within two to three inches. Is that from
13 your training?

13

14 A. Yeah. I mean it was just not
15 right in front of their face. Again, I'm
16 not sure what the recommended is, but it's
17 not supposed to be right in their face.

17

18 Q. Okay. Since your academy
19 training have you received any other
20 training about the use of pepper spray?

20

21 A. Not that I recall, no.

21

22 Q. Do you remember anything
23 specific about your academy training other
24 than what you've already testified to?

24

25 MR. CAMPOLIETO: Objection.

25

A. As far as the pepper spray you

1

2 mean?

3 Q. Correct.

4 A. No. We did, I think, practice
5 with an inert version just so we would know
6 how it comes out of the can, because I
7 think it comes out as a cone shape. I
8 think we just used like practice cans.

9 Q. Okay. What does -- let me back
10 up. You said the inert version. Do you
11 mean that there's more than one version of
12 pepper spray?

13 MR. CAMPOLIETO: Objection.

14 A. So instead of being like the
15 live agent, it's just -- it had like a mint
16 smell to it or something like that. It
17 wasn't live agent in the can. It was more
18 so we knew how they worked.

19 Q. Not something that would sting
20 if it got into your eyes or you breathed it
21 in?

22 A. Correct.

23 Q. Were you ever exposed to the
24 real version in the academy?

25 A. Yes.

1

2 Q. Okay. So that was a different
3 part of the training?

4 A. Yes.

5 Q. Okay. Since graduating from
6 the academy, in your time -- in your
7 fifteen years with the department, have you
8 used different kinds of pepper spray?

9 MR. CAMPOLIETO: Objection.

10 A. I think we changed brands
11 somewhere in there. I don't remember
12 specifically what it was or why.

13 Q. In general it's -- when you
14 changed brands, was it a similar type of
15 canister and deployment system?

16 A. Yes.

17 Q. Okay. It's not like suddenly
18 it went from, you know, working one way to
19 working completely differently?

20 A. No. Correct.

21 (Manual entitled Aerosol
22 Subject Restraint Course - Instructor
23 Guide was marked as Plaintiff's
24 Exhibit 7 for identification as of
25 this date.)

1

2 Q. Okay. I want to just put up
3 what will be marked as Exhibit 7. That is
4 a document Bates numbered COR 000139 to
5 COR 000310. That's the aerosol subject
6 resistance course, instructor guide. I'm
7 just going to ask you a couple questions
8 about that.

9 Do you see that document on
10 your screen, Investigator?

11 A. Yes.

12 Q. Let me find the page and fast
13 forward. I'm going to fast forward to page
14 141 of the PDF, and I'll give you the Bates
15 number. I actually wanted to come back to
16 that. Give me one second.

17 MR. CAMPOLIETO: Where did this
18 document come from?

19 MR. SHIELDS: It came from you,
20 I believe, on -- I forget what date
21 the City produced this document, but
22 I think it was the September 2020
23 production.

24 MR. CAMPOLIETO: What is the
25 number in the right-hand corner?

1

2

MR. SHIELDS: The number in the
right-hand corner?

3

4

MR. CAMPOLIETO: Go down.

5

6

7

8

9

10

11

12

13

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15

16

17

18

19

20

21

MR. SHIELDS: This is the Bates
number. It looks like -- I think
that, John, you guys took -- this is
a problem for us to discuss later,
but I believe this is Vann on the
bottom left-hand corner, and on the
bottom right is a Bates number from a
previous case that the City produced
this in. In this case you've used
COR or COR VANN. I think what I did
was I copied and pasted this into a
Word document. I can get and read
it. Because you put confidential
over the Bates number, that made it
hard to read. I figured it out and
that's why it says at the top here
COR 139 to COR 310.

22

23

24

MR. CAMPOLIETO: That number on
the right-hand side was already on
the document?

25

MR. SHIELDS: I did not add

1

2 this number. Correct. If I had to
3 guess, John, I think it's from Dudley
4 Scott's case -- I mean Septimus
5 Scott's case. I think it's been
6 produced two or three times in this
7 case.

8 MR. CAMPOLIETO: In this case,
9 what do you mean?

10 MR. SHIELDS: You produced this
11 as COR 139 to 310, and then when you
12 reproduced the entire production from
13 Septimus Scott's case, it's got a
14 different Bates number.

15 MR. CAMPOLIETO: Okay.

16 Q. So it looks like -- first let
17 me just back up, Investigator. Just
18 looking at these few pages as I'm scrolling
19 here, does this look like a document that
20 you've seen before or that maybe was shown
21 to you at the academy?

22 A. No. I think it said on top it
23 was for instructors. I'm not an
24 instructor.

25 Q. Okay. I think down here

1

2 there's like a test. Anyway -- either way,
3 let me back up. Does any of this look like
4 something you might have been shown at a
5 training course, if you remember?

6 A. I don't remember any of this,
7 no.

8 Q. Okay. All right. Generally
9 this page here, which is page 142 out of
10 172, says, "Canister operation. Effective
11 ranges depends on type and manufacturer.
12 General rule: Minimum of 2 feet." Does
13 that refresh your recollection at all,
14 looking at that page, if that was something
15 you were ever taught at the academy or
16 otherwise?

17 A. I don't remember this, no.

18 Q. Okay. I'm going up to page 141
19 out of 172 in this PDF document which says,
20 "Other medical concerns." The first one
21 listed here is hydraulic needle, and it
22 says, "Spraying at close proximity, in the
23 eyes, there is a possibility to injury the
24 eye." That's what it says. Often I
25 misread it, but I think it read it and it

1

2 was just typed up wrong. Is that something
3 that you were taught either at the academy
4 or somewhere else, that if you spray too
5 close to the eyes, that somebody could
6 sustain an injury?

7 A. Again, it was fifteen years
8 ago. I don't remember specifically what
9 the training said.

10 Q. Okay. Do you remember why you
11 said a few minutes ago that you did
12 remember someone saying not to spray from
13 two to three inches, it had to be a
14 slightly longer distance?

15 A. So ours comes out as a cone.
16 If they're very close, it's not effective.

17 Q. Okay. So the reason that you
18 said -- I'm just going to take that down
19 for now. The reason that you said not to
20 spray from too close is because of its
21 effectiveness, not because of the potential
22 harm to the subject?

23 A. Correct. From what I
24 understand, yeah, it's a cone. It's not
25 super pressurized or anything. It's just

1

2 the shape that it comes out.

3 Q. Okay. Were you ever taught that
4 if you spray someone from too close, that
5 it could cause injury to that subject's
6 eyes?

7 A. I don't recall.

8 Q. Okay. And you've not received
9 any training about the use of pepper spray
10 since the academy?

11 A. Like I said, I think we
12 switched over manufacturers awhile ago and
13 I think we had something then. I don't
14 remember specifically what it was or what
15 it was about. The style and everything was
16 the same.

17 Q. Do you remember when that
18 switch was made?

19 A. I don't.

20 Q. Do you remember if it was
21 before or after this David Vann incident in
22 September 2015?

23 A. I think it was before then, but
24 I don't remember when.

25 MR. SHIELDS: Okay. I'm going

1

2

to put up the next exhibit which is
just going to be information from the
Melinda Santos incident. So that's
going to be Exhibit 8.

6

(Information/complaint -

7

disorderly conduct re Melinda Santos
was marked as Plaintiff's Exhibit 8
for identification as of this date.)

8

9

10

MR. CAMPOLIETO: Let's take a

11

five-minute -- three-minute break.

12

I'll be right back.

13

MR. SHIELDS: Not a problem.

14

(Whereupon, a recess was taken

15

from 1:22 p.m. until 1:28 p.m.)

16

Q. Investigator, we just took a

17

quick break. During that break did you

18

have time to talk with your attorney?

19

A. I used the bathroom.

20

Q. Okay. You didn't talk with

21

John at all?

22

A. I asked him if I needed to make

23

some phone calls to try and get the kids.

24

He said we're going to try and hopefully

25

make it.

1

2 Q. We'll bring you back next time.
3 That will be fine.

4 After taking a break, are there
5 any answers to any questions that we
6 already asked that you want to change?

7 A. No. They're all my answers.

8 Q. Okay. So I wanted to just mark
9 this as Exhibit 8. It's the information
10 from the Melinda Santos incident. Do you
11 see that on your screen?

12 A. Yes.

13 Q. There's not much here other
14 than this incident occurred on the 6th of
15 May 2016. Is that right?

16 A. Yes.

17 Q. I can't really read this part,
18 but my understanding of what happened in
19 that incident is there was a fight outside
20 of the German House that you broke up. Is
21 that fair to say?

22 A. Yeah. It was down the road
23 from the German House. I think they had
24 like a concert or something. Maybe less
25 than a block away. In the area.

1

2 Q. You arrested Melinda Santos and
3 the other person that she was fighting
4 with?

5 A. Yes.

6 Q. Okay. And charged her with
7 disorderly conduct?

8 A. Correct.

9 Q. And then she brought a lawsuit
10 arising from that incident. Correct?

11 A. Yes.

12 Q. The City of Rochester settled
13 that lawsuit?

14 A. That's what I was told. I
15 wasn't familiar with it. I did a
16 deposition and that was the last I knew of
17 it.

18 Q. Okay. You did a deposition.
19 You testified at the deposition but you did
20 not testify at trial. Is that right?

21 A. Correct.

22 Q. Okay. And you used pepper spray
23 during that incident?

24 A. Yup.

25 Q. Okay. You used pepper spray

1

2 twice?

3 A. Yeah. It was kind of a general
4 group spray because there were multiple
5 people. I was just trying to get everybody
6 to stop fighting and disperse.

7 Q. Okay. So you sprayed the group
8 of people to disperse and then you sprayed
9 Melinda and the person she was fighting
10 with?

11 A. Yes. I believe so.

12 Q. And are you allowed, pursuant
13 to RPD training and policies, to spray
14 groups of people?

15 A. Yeah. I mean there's nobody
16 that was a target. It's just an irritant
17 to -- it hopefully just makes people not
18 want to be there.

19 Q. Okay. And did you fill out a
20 subject resistance report as a result of
21 that incident?

22 A. For the group? Is that what
23 you mean?

24 MR. CAMPOLIETO: Objection.

25 Q. In general. One report or two

1

2 reports, or how ever many, just arising
3 from the incident where you ended up
4 arresting Melinda Santos?

5 A. I don't recall. I probably
6 would have done one for Melinda if there
7 was the pepper spray. So there had to have
8 been one for that.

9 Q. Okay.

10 A. Again, this was years ago, so I
11 don't recall all the specifics.

12 Q. Sure. So you don't remember
13 sitting here today if there was an SRR
14 completed for that incident?

15 A. There should be one for
16 Melinda, yes, --

17 Q. Okay.

18 A. -- for the pepper spray.

19 MR. SHIELDS: John, I looked
20 for it in the production. I didn't
21 see it. That could have just been
22 because there were a lot of them. To
23 the extent that it wasn't produced,
24 I'm going to ask for it, and I'll
25 follow up in writing.

1

2 Q. Now, at the scene did Melinda
3 complain about any injuries?

4 A. She said something hurt. I
5 asked her if she wanted an ambulance and
6 she said no. I don't remember what it was
7 -- what the complaint was.

8 Q. When you walked up to Melinda,
9 she had been punched multiple times in the
10 face. Is that right?

11 A. She was actively involved in a
12 fight. She was throwing punches as well.

13 Q. And she was punched in the face
14 numerous times?

15 A. Yes.

16 Q. I think at your other
17 deposition you testified that she was
18 punched in the face a bunch a times, you
19 pepper sprayed them, they stopped for a
20 minute and then she got punched in the face
21 several more times. Is that right?

22 A. Yeah. I think it was about
23 three times. The other girl had a hold of
24 her hair and hit her on the side of the
25 head.

1

2 Q. Like hard blows that she got to
3 the head?

4 A. Yeah. They were punches. Yeah.

5 Q. And she claimed in her lawsuit
6 that you had thrown her to the ground on
7 the cement. Right? Is that your
8 understanding of what she alleged?

9 A. I don't recall what the detail
10 was, but it was something to that extent.

11 Q. Either way, she alleged that
12 she sustained several fractured vertebrae
13 in her neck. Is that right?

14 A. I think I remember that, but I
15 don't remember the specific injury.

16 Q. Okay. Did she look like she
17 had serious injuries at the scene of the
18 incident?

19 A. No. I mean she was disheveled
20 from the fight. Like her hair was a mess
21 and stuff like that. Nothing obvious.

22 Q. Okay. So you said that she --
23 you asked her if she wanted an ambulance.
24 What was her response?

25 A. She said no.

1

2 Q. Okay. What is the policy for
3 the RPD about calling an ambulance for
4 someone in a circumstance like that?

5 A. So she was free to go because
6 she got an appearance ticket. It was her
7 option if she wanted to go or not. I think
8 I related to her friends when they got
9 there and asked them to try and, you know,
10 see if she wanted help.

11 Q. Okay. So in that instance she
12 was given an appearance ticket and released
13 from the scene?

14 A. She was released after we did
15 the eye wash. So we moved from the scene
16 to the public safety building, I think is
17 where we did the eye flush, and I think her
18 friends picked her up there, I believe.

19 Q. When someone is pepper sprayed
20 are you required to bring them to PSB to do
21 the eye wash?

22 A. That's where I use. I think
23 there was another station at one time but I
24 don't think it's maintained any more.

25 Q. Okay. Would it have been an

1

2 option to just release her from the scene
3 or did you have to take her to PSB?

4 A. No. We always eye wash or do
5 the flush.

6 Q. Is there ever an instance where
7 someone is injured and says that they don't
8 want an ambulance but you are required to
9 call the ambulance anyway?

10 MR. CAMPOLIETO: Objection.

11 A. Sometimes if -- perhaps if
12 they're in custody, because then they're in
13 our care so they don't have really the
14 option. She got an appearance ticket so
15 she was free to go.

16 Q. Okay. So there's a different
17 standard if someone is in custody versus if
18 they're free to go?

19 A. Correct. She wasn't in, I
20 guess, my care at the time.

21 Q. Okay. So when someone is in
22 custody, when is -- when are they required
23 to have an ambulance called for them?

24 A. I guess if there's like obvious
25 injury. You know, if their hand is cut

1

2 open or something and it looks like they
3 might need a stitch.

4 Q. Or if they had suffered a head
5 injury?

6 A. Like an open head wound? Is
7 that what you mean?

8 Q. Sure. Like if you got a big
9 open head wound, are you required to call
10 for an ambulance?

11 A. We would I guess. I don't know
12 if we're required, but usually we would
13 because then they're showing signs of
14 injury.

15 Q. How about if somebody sustained
16 head trauma, are you required -- let me
17 rephrase that. If someone has sustained
18 head trauma and there's no visible serious
19 injury to the head, like a big laceration,
20 but you know that they suffered trauma to
21 their head, are you required to call an
22 ambulance?

23 MR. CAMPOLIETO: Objection.

24 A. I don't know if we're required.
25 A lot of times we'll call like the

1
2 ambulance company and get their opinion.
3 If they say no, they should be treated,
4 then we'll do that.

5 Q. Okay. So were you ever taught
6 or trained by the RPD that somebody can
7 sustain a head injury and have, for
8 example, internal bleeding that you can't
9 see and that you should call an ambulance
10 because of that?

11 MR. CAMPOLIETO: Objection.

12 A. I know I've done that before,
13 but I don't specifically remember any
14 training.

15 Q. It wouldn't necessarily be a
16 requirement?

17 A. It could be, but I don't recall
18 specifically it being a requirement.

19 Q. Okay. Would that be the type
20 of thing that you would receive training on
21 at the academy?

22 A. It's possible. Again, that was
23 fifteen years ago, so I don't remember all
24 of it.

25 Q. Like for example, there is the

1

2 incident that happened at Depaul last week,
3 right, where the staff member was
4 assaulted, drove away and ended up dying
5 from a head injury?

6 A. Yeah.

7 Q. Were you ever trained that
8 something like that can happen? You know,
9 they can appear to be physically okay but
10 suffer internal damage from blows to the
11 head?

12 A. I know it can happen, but I
13 don't remember specific training on it.

14 MR. SHIELDS: Okay. I've got a
15 few more questions and I think it's a
16 good time to break for the day.

17 Q. In terms of bringing you back,
18 your schedule is the same. Right? You
19 work nights and then you've got to pick up
20 kids at 2 p.m.?

21 A. Yeah. I know I've got some
22 court and other stuff coming, too. I have
23 to grab a calendar.

24 Q. We can figure it out. Sometime
25 around 10 or 11 a.m. to 2 p.m. would be a

1

2 good time to redo this?

3 A. I can still get a few hours of
4 sleep so I'm not exhausted. Then it's
5 possible I can get held for investigations
6 and stuff. Unfortunately I'm kind of all
7 over the place schedule wise.

8 (Rochester Police Department
9 General Order 335 - Subject
10 Resistance Report was marked as
11 Plaintiff's Exhibit 9 for
12 identification as of this date.)

13 Q. All right. I just want to put
14 up what I've marked as Exhibit 9. That's
15 going to be General Order 335 about subject
16 resistance reports. I'm just going to ask
17 you a few questions on that.

18 This is the version that went
19 into effect on April 20, 2015. Do you see
20 that in the left-hand corner there?

21 A. Yup.

22 Q. It looks like Ciminelli was the
23 chief then. Right?

24 A. Yup.

25 Q. So appropriate force. It says,

1

2 "The reasonable force, based upon the
3 totality of the circumstances known by the
4 member, to affect an arrest, overcome
5 resistance, control an individual or
6 situation, defend self or others, or to
7 prevent a subject's escape." We generally
8 had agreed to that definition earlier.
9 Right?

10 A. I don't remember it being a
11 definition, but it seems appropriate I
12 guess.

13 Q. Okay. So in general is that
14 consistent with your understanding of
15 appropriate use of force?

16 A. Sure. Yes.

17 Q. Basically reasonable under the
18 circumstances. Let me just see here. I
19 guess this is under procedures. Okay. I
20 want to ask about some procedures in
21 section III. I want to go down to II which
22 says -- III A 2, "After force is used,
23 immediately evaluate the need for medical
24 attention or treatment for that person upon
25 whom the techniques were used and arrange

1

2 for such treatment when: That subject has
3 a visible injury requiring medical
4 attention, including injuries prior to the
5 use of force; B, subject complains of
6 injury or requests for medical attention;
7 C, OC, PLS or the taser was used." So is
8 that section consistent with what we talked
9 about in the Melinda Santos incident?

10 A. For the pepper spray? Is that
11 what --

12 Q. Correct.

13 A. Taking them to the eye wash
14 station, is that what you mean, or for the
15 visible injury requiring medical attention?

16 Q. I guess, you know, is that --
17 both of those things. OC was used so
18 you've got to evaluate the need for medical
19 attention or treatment. Right?

20 A. The OC we do the eye wash for.
21 You know, whatever she complained of, her
22 head hurting or anything, she -- there was
23 nothing visible, and she got an appearance
24 ticket so she was able to leave. She
25 wasn't, I guess, under arrest or in custody

1

2 at that time.

3 Q. Okay. What about a situation

4 where the person is unable to request

5 medical attention because, for example,

6 they're unconscious. What are you supposed

7 to do in that instance?

8 MR. CAMPOLIETO: Objection.

9 A. So if they're unconscious but
10 need medical attention?11 Q. Correct. If you're trying to
12 evaluate if they need medical attention and
13 they're in custody?

14 A. They're in custody already?

15 Q. Correct.

16 A. I mean you'd have to -- and
17 they have visible injuries? I just want to
18 make sure I understand the question
19 correctly. They're in custody but
20 unconscious but have visible injury?

21 Q. Correct.

22 A. I guess they go to get treated.
23 I mean if they're in custody and
24 unconscious and have an open wound, we'd
25 probably, yeah, get them treatment.

1

2 Q. So let's say the head injury is
3 causing them to be unconscious and they had
4 scrapes and cuts on their head or face,
5 that would be an instance where you would
6 get them medical treatment?

7 A. There's nothing they can really
8 do for like abrasions. Depending on the
9 size of the cut. I mean if there's need
10 for stitches, then yes, we would. That
11 might be maybe a case where we would ask
12 the ambulance crew to look at them.

13 Q. Sure. And if they're
14 unconscious as a result of sustaining blows
15 to the head, is that an instance where you
16 think they should be transported to the
17 hospital?

18 MR. CAMPOLIETO: Objection.

19 A. If they're unconscious you want
20 to take them to the hospital, yes.

21 Q. Because you never know how
22 serious an internal injury to the head
23 could be?

24 MR. CAMPOLIETO: Objection.

25 A. I mean if they're unconscious

1

2 you don't know anything.

3

4 Q. Other than that they're unable
5 to respond and request medical treatment on
6 their own. Correct?

6

A. Sure.

7

8 Q. If you were at a situation
9 where someone was unconscious and unable to
10 request medical attention on their own, and
11 you were involved in that incident, would
12 you insist on that person being transported
13 to the hospital?

13

A. Are you saying like we just
14 found somebody on the side of the street?
15 That's kind of the example I guess?

16

Q. Sure. You show up to an
17 incident, you see the subject in the back
18 of a police car, his eyes are closed, he's
19 not talking, and all that you know is that
20 there had been an altercation with other
21 officers. Do you think that person should
22 be transported to the hospital?

23

A. I don't know. I mean I don't
24 know the circumstances. I mean sometimes
25 we just have people that lay down. So

1

2 without, I guess, details, it's hard to, I
3 guess, make a judgment.

4

5 MR. SHIELDS: Okay. If we have
6 to bring you back, I think this is
7 probably a good place for us to stop.
8 I understand you've got kids. I
9 would rather keep asking my questions
10 but, you know, I'd rather let you go
11 and figure out a convenient time for
12 us to finish the deposition.

13

14 So we're going to hold the
15 deposition open pursuant to an
16 agreement with me and John, between
17 Counsel.

18

19 Do we think we can bring him
20 back maybe Wednesday when Mintz was
21 going to go? I want to finish his
22 deposition before Mintz.

23

24 THE WITNESS: I am out of town
25 on Wednesday for the rest of the
26 week. I'm leaving the state. I've
27 got a flight.

28

29 MR. CAMPOLIETO: We can do
30 Mintz Wednesday. Elliot, we'll

1

2

figure this out after I get my

3

calendar.

4

MR. SHIELDS: Okay. I'll be in

5

Rochester next week. I'm doing a

6

bunch of stuff. I don't know if next

7

week is going to work for me, but

8

maybe the week after that.

9

Thank you.

10

11

(Time noted: 1:51 p.m.)

12

13

14

15

CHRISTOPHER J. BARBER

16

17

18

19 Subscribed and sworn to

20 before me this ____ day

21 of _____, 20____

22

23

Notary Public

24

25

I N D E X

TESTIMONY

WITNESS

EXAMINATION BY

PAGE

Christopher Barber Mr. Shields

6

EXHIBITS

PLAINTIFF

EXHIBIT NO.

DESCRIPTION

PAGE

1

Concise officer history

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2

Investigator Barber's
PDS file

65

3

Subject resistance
report CR# 11-393543

73

4

Subject resistance
report CR# 15-047046

98

5

Subjection resistance
report CR# 16-221860

100

6

Subject resistance
report CR# 11-371822

100

7

Manual entitled Aerosol
Subject Restraint Course
- Instructor Guide

116

8

Information/complaint
disorderly conduct re
Melinda Santos

123

9

Rochester Police
Department General
Order 335 - Subject
Resistance Report

135

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INSERTS

DESCRIPTION
(None)

PAGE

REQUESTS

DESCRIPTION

PAGE

Provide details for the incident
listed in the officer concise history

64

Production of the SRR for the Melinda
Santos incident

127

MARKED FOR RULING

DESCRIPTION
(None)

PAGE

1
2 CERTIFICATION3
4 STATE OF NEW YORK)
5) ss
6 COUNTY OF ORANGE)7 I, Michelle Conero, a stenotype
8 reporter and Notary Public within and for
9 the State of New York, do hereby certify;10 That the witness whose
11 Examination Before Trial is hereinbefore
12 set forth was duly sworn by me;13 That such Examination Before
14 Trial is a true and accurate record of the
15 testimony given by said witness.16 I further certify that I am not
17 related to any of the parties to this
18 action by blood or marriage, and that I am
19 in no way interested in the outcome of this
20 matter.21 IN WITNESS WHEREOF, I have hereunto
22 set my hand this 8th day of December 202223 *Michelle Conero*
24 _____

25 Michelle Conero

